City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Meeting Agenda - Final

City Council

Tuesday, December 13, 2016 | **6:00 PM** | **Council Chambers**

Study Session Meeting to be held at 3:00 p.m. in the Study Session Room

A. STUDY SESSION

A.1 16-256 **Discuss regular City Council meeting agenda items.**

A.2 16-314 **Receive an update from Former State Representative Fred Hill concerning Legislative Issues.**

A.3 16-301 **Receive an update on proposed amendments to the Mandatory Crime Reduction Program for Apartment Complexes.**

A.4 16-319 **Receive a report from the Sustainability Committee prioritizing the items they will review during the next year and possibly bring to City Council for consideration.**

A.5 16-257 **Discuss agenda items for future City Council meetings.**

B. INVOCATION & PLEDGE OF ALLEGIANCE

C. CEREMONIAL ITEMS

C.1 16-318 **Recognition of Parks and Recreation Department staff for the award of Excellence in Maintenance on behalf of the Texas Recreation and Park Society.**

C.2 16-305 **Receive an update from State Representative Matt Rinaldi regarding the upcoming Legislative Session.**

D. REPORT ON STUDY SESSION ITEMS

E. CITY MANAGER'S REPORT AND ITEMS OF COMMUNITY INTEREST

Pursuant to Section 551.0415 of the Texas Government Code, the City Council or City Administration may report information on the following items: 1) expression of thanks, congratulations or condolences, 2) information about holiday schedules, 3) recognition of individuals, 4) reminders about upcoming City events, 5) information about community events, and 6) announcements involving an imminent threat to public health and safety.

F. CITIZEN COMMENTS

This agenda item provides an opportunity for citizens to address the City Council on any matter that is not posted on the agenda. Anyone wishing to address the City Council should complete a Citizen Comments Registration Card and submit it to the City Secretary or City Administration prior to the start of the City Council meeting. There is a three (3) minute time limit for each citizen to speak. Anyone wishing to speak shall be courteous and cordial. No disparaging or inflammatory remarks directed at any member of the City Council or City staff will be allowed.

The City Council is not permitted to take action on any subject raised by a speaker during Citizen Comments. However, the City Council may have the item placed on a future agenda for action; refer the item to the City Manager and/or City Administration for further study or action; briefly state existing City policy; or provide a brief statement of factual information in response to the inquiry.

G. CONSENT AGENDA

G.1 16-306 **Consider approving minutes of the City Council meeting held on November 15, 2016; and take appropriate action.**

G.2 R2016-097 **Consider approving Resolution No. 2016-097 authorizing the City Manager to execute an amendment to the agreement with Redflex Traffic Systems for the continued provisioning of photographic red light enforcement services; and take appropriate action.**

G.3 R2016-121 **Consider approving Resolution No. 2016-121 abandoning a utility easement located on property both within the City limits of Farmers Branch and the City of Dallas; and take appropriate action.**

G.4 ORD-3405 **Consider adopting Ordinance No. 3405 approving the 2015 International Building Code as amended; and take appropriate action.**

G.5 ORD-3406 **Consider adopting Ordinance No. 3406 adopting the 2015 International Residential Code as amended; and take appropriate action.**

G.6 ORD-3407 **Consider adopting Ordinance No. 3407 adopting the 2015 International Energy Conservation Code as amended; and take appropriate action.**

G.7 ORD-3408 **Consider adopting Ordinance No. 3408 approving the 2015 International Mechanical Code as amended; and take appropriate action.**

G.8 ORD-3409 **Consider adopting Ordinance No. 3409 adopting the 2015 International Plumbing Code as amended; and take appropriate action.**

G.9 ORD-3410 **Consider adopting Ordinance No. 3410 adopting the 2015 International Fuel Gas Code as amended; and take appropriate action.**

G.10 ORD-3411 **Consider adopting Ordinance No. 3411 approving the 2014 National Electric Code as amended; and take appropriate action.**

G.11 ORD-3414 **Consider adopting Ordinance No. 3414 amending Chapter 38 titled "Fire Prevention and Protection" of the Code of Ordinances by adopting the provisions of the 2015 edition of the International Fire Code with amendments and take appropriate action.**

G.12 ORD-3413 **Consider adopting Ordinance No. 3413 approving the 2015 Texas Food Establishment Rules as amended; and take appropriate action.**

G.13 R2016-104 **Consider approving Resolution No. 2016-104 authorizing acceptance of a sidewalk and pedestrian access easement from Dallas County Community College District related to the bicycle and pedestrian trail system; and take appropriate action.**

G.14 R2016-115 **Consider approving Resolution No. 2016-115 authorizing the City Manager to execute a professional services agreement with Weaver Consultants Group, LLC for Phase E of the landfill gas collection system at Camelot Landfill for the design, permitting, and construction quality assurance; and take appropriate action.**

G.15 R2016-124 **Consider approving Resolution No. 2016-124 ratifying an emergency purchase order with Rebcon Inc. for bridge and road collapse repairs along Luna Road; and take appropriate action.**

H. PUBLIC HEARINGS

H.1 16-300 **Conduct a Public Hearing and consider an appeal from designation in the Mandatory Crime Reduction Program for London Square Apartments located at 4030 Valley View Lane in Farmers Branch; and take appropriate action.**

H.2 ORD-3404 **Conduct a Public Hearing and consider adopting Ordinance No.3404 authorizing a Specific Use Permit for the sale of alcoholic beverages in a qualified restaurant located at 1801 Royal Lane, Suite 700; and take appropriate action.**

I. REGULAR AGENDA ITEMS

I.1	R2016-105	**Consider approving Resolution No. 2016-105 authorizing the City Manager to negotiate and execute the second amended and restated agreement for library services with Library Systems & Services; and take appropriate action.**
I.2	R2016-116	**Consider approving Resolution No. 2016-116 for approval of a Detailed Site Plan for a 35.7 acre tract located west of Mercer Crossing Lake and south of Wittington Place; and take appropriate action.**
I.3	R2016-117	**Consider approving Resolution No. 2016-117 for approval of a Detailed Site Plan for a 16.8 acre tract located east of Luna Road and south of Wittington Place; and take appropriate action.**
I.4	R2016-118	**Consider approving Resolution No. 2016-118 amending the Policy Statement on Local Economic Development and Business Incentives for the demolition rebuild program; and take appropriate action.**
I.5	R2016-111	**Consider approving Resolution No. 2016-111 authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of the property located at 14326 Castleton Drive; and take appropriate action.**
I.6	R2016-122	**Consider approving Resolution No. 2016-122 authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of the property located at 3535 Apple Valley; and take appropriate action.**
I.7	R2016-123	**Consider approving Resolution No. 2016-123 authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of the property located at 12711 Epps Field; and take appropriate action.**
I.8	R2016-128	**Consider approving Resolution No. 2016-128 authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of the property located at 14340 Olympic Drive; and take appropriate action.**
I.9	R2016-125	**Consider approving Resolution No. 2016-125 authorizing a Commercial Facade Revitalization Grant Agreement for 4885 and 4887 Alpha Road; and take appropriate action.**
I.10	R2016-129	**Consider approving Resolution No. 2016-129 authorizing the purchase of a 105-foot ladder truck for the Fire Department through the Houston-Galveston Area Council of Government Cooperative Purchasing Agreement; and take appropriate action.**

I.11 R2016-119 **Consider approving Resolution No. 2016-119 authorizing the City Manager to negotiate and execute a contract for medical stop-loss insurance coverage; and take appropriate action.**

I.12 R2016-120 **Consider approving Resolution 2016-120 authorizing the City Manager to negotiate and enter into an agreement with Gallagher Construction in an amount not to exceed $250,000.00 to serve the City of Farmers Branch as the Construction Manager for the Justice Center Security Upgrade project; and take appropriate action.**

I.13 16-320 **Presentation by former Mayor William Glancy regarding wall screening at Marsh Lane and Wooded Creek.**

The City Council may convene into executive session at anytime during the Study Session or Regular Session pursuant to Texas Government Code Section 551.071(2) for the purpose of seeking confidential legal advice from the City Attorney on any regular or study session agenda item.

J. EXECUTIVE SESSION

J.1 16-311

Council shall convene into a closed executive session pursuant to Section 551.072 of the Texas Government Code to deliberate regarding:

(a) Discuss the purchase, exchange, lease, or sale of real property located at 13605 Webb Chapel Road.

(b) Discuss the purchase, exchange, lease, or sale of real property located north of 635, east of I35, west of Webb Chapel Road, south of Valwood Parkway.

K. RECONVENE INTO REGULAR SESSION AND TAKE ANY ACTION NECESSARY AS A RESULT OF THE CLOSED SESSION

L. ADJOURNMENT

Farmers Branch City Hall is wheelchair accessible. Access to the building and special parking are available at the main entrance facing William Dodson Parkway. Persons with disabilities planning to attend this meeting who are deaf, hearing impaired or who may need auxiliary aids such as sign interpreters or large print, are requested to contact the City Secretary at (972) 919-2503 at least 72 hours prior to the meeting.

Certification

I certify that the above notice of this meeting was posted at least 72 hours prior to the scheduled meeting time, in accordance with the Open Meetings Act, on the bulletin board at City Hall.

Posted by: _____
City Secretary

Date posted: _____

City of Farmers Branch

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Staff Report

File Number: 16-256

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Study Session

In Control: City Council **File Type:** Report

Agenda Number: A.1

Discuss regular City Council meeting agenda items.

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Staff Report

File Number: 16-314

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Study Session

In Control: City Council **File Type:** Report

Agenda Number: A.2

Receive an update from Former State Representative Fred Hill concerning Legislative Issues.

City of Farmers Branch

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Staff Report

File Number: 16-301

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Study Session

In Control: City Council **File Type:** Report

Agenda Number: A.3

Receive an update on proposed amendments to the Mandatory Crime Reduction Program for Apartment Complexes.

BACKGROUND:
City Council requested staff to provide amendments to Ordinance #3038 to increase the effectiveness of the ordinance.

Police Chief David Hale will present the proposed amendments.

Mandatory Crime Reduction Program For Apartments: Proposed Amendments

FARMERS BRANCH

Farmers Branch Police

Mandatory Crime Reduction Program: Proposed Amendments

- Upon registration for license with Building Official receive MCRPA Ordinance.
- Clarifies that crime is any incident that requires a report or results in arrest on complex property or can be reasonably linked to the property.
- Adds comparative residential crime index for comparison.

FARMERS BRANCH

Mandatory Crime Reduction Program: Proposed Amendments

- Adds FBPD Criminal Trespass Program and signage.
- Adds Residential Security Survey to be returned to Police Chief within 30 days of move in.
- Increases program fee to $2,000

FARMERS BRANCH

MANDATORY CRIME REDUCTION PROGRAM: PROPOSED AMENDMENTS

- Adds “Repeat Offender Status”
  - Repeat after 24 months in program (Ordinance stipulates that being in the program currently counts against the 24 months)
  - Complex shall be required to hire on-site security.

FARMERS BRANCH

Mandatory Crime Reduction Program: Proposed Amendments

- Probationary Status: Upon being deemed a repeat offender the complex has 90 days to fall below the crime threshold for a minimum of 30 consecutive days.
- Suspended Status: Failure to make probation results in the complex not being able to rent vacant apartments for 90 days.
- Failure to fall below the crime threshold during the first period of suspension will result in the complex not being able to rent vacant apartments for 180 days.

FARMERS BRANCH

Questions?

FARMERS BRANCH

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FARMERS BRANCH, CHAPTER 26 "BUSINESSES," BY AMENDING ARTICLE IV "APARTMENT COMPLEX RENTAL", BY AMENDING SEC. 26-113; AND FURTHER AMENDING ARTICLE VII "MANDATORY CRIME REDUCTION PROGRAM FOR DESIGNATED APARTMENT COMPLEXES", BY AMENDING SEC. 26-453 THROUGH SEC. 26-458 IN THEIR ENTIRITY; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest and necessary for the preservation of public health and safety within the City of Farmers Branch to amend the Code of Ordinances as follows.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Chapter 26 "Businesses", Article IV "Apartment Complex Rental" of the Code of Ordinances of the City of Farmers Branch is amended as follows:

"…..

Sec. 26-113. License application; place of business; issuance; renewal and expiration.

(a) An applicant for a license shall file with the building inspector a written application upon a form provided for that purpose which shall be signed by the owner, or his agent, and the property manager. Should an applicant own an apartment complex at more than one location, a separate application shall be filed for each location. The following information shall be required in the application:

…..

(6) Acknowledgment of receipt of copy of the mandatory crime reduction program for apartment complexes ordinance and agreement to abide by such ordinance, where applicable, as a condition to receiving and maintaining a license.

SECTION 2. Chapter 26 "Businesses", Article VII "Mandatory Crime Reduction Program for Designated Apartment Complexes" of the Code of Ordinances of the City of Farmers Branch is amended in its entirety to read as follows:

"Sec. 26-450. Purpose.

(a) The purpose of this article is to protect the health, safety, morals, and welfare of the occupants of apartment complexes and other citizens of the city by obtaining greater compliance with minimum property standards through the establishment of a mandatory crime reduction program for apartment complexes. Reducing the crime rate at an apartment complex is essential to making the apartment complex safe, sanitary, and fit for human use and habitation.

Sec. 26-451. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apartment complex shall mean a multifamily property that contains ten or more dwelling units that are leased or offered for lease and are not independently owned.

Chief of police shall mean the chief of the police department of the city or the chief's authorized representative.

Crime shall mean any and all incidents that occur at an apartment complex that cause a criminal offense or arrest report to be generated by the Farmers Branch Police Department. Crime shall include, without limitation, any events occurring within the surrounding neighborhood that, through information or investigation, can be traced to the apartment complex premises. Crime shall not include offenses or arrests that result from transition onto an apartment complex as a result of traffic enforcement initiated by the Farmers Branch Police Department from a street, roadway and/or drive not owned by, or under the control of, the apartment complex.

Owner means a person claiming, or in whom is vested, the ownership, dominion or title of real property, including, but not limited to:

(1) Holder of fee simple title.
(2) Holder of life estate.
(3) Holder of a leasehold estate for an initial term of five years or more.
(4) The buyer in a contract for deed.
(5) A mortgagee, receiver, executor or trustee in control of real property; but not including the holder of a leasehold estate or tenancy for an initial term of less than five years.

Property manager means a person who for compensation has managing control of an apartment complex for the owner.

Sec. 26-452. Authority of the chief of police.

The chief of police, or his/her designee, shall implement and enforce the provisions under this article.

Sec. 26-453. Apartment complex crime index.

(a) The chief of police will calculate the apartment community crime index on a semi-annual basis or at any time determined necessary by the chief of police. The apartment complex crime index will be calculated by dividing the total crime in a specific apartment complex by the total number of units in the apartment complex and multiplying that sum by 100, giving a ratio of crime per 100 units.

(b) The chief of police shall calculate a comparative residential crime index on an annual basis, or any time determined necessary, for single family dwellings within the corporate limits of the City. The residential crime index calculation shall be based upon the total number of single family residences and shall be calculated utilizing the same methods provided in subsection (a) and in section 26-454(b).

(c) An apartment complex that has a crime-risk safety threshold equal to or less than the single family residence crime threshold shall not be included in the program.

Sec. 26-454. Crime risk/safety threshold.

(a) The chief of police shall collectively calculate the crime risk/safety threshold for all registered apartment complexes in the city on an annual basis or at any time determined necessary by the chief of police.

(b) The crime risk/safety threshold is calculated by taking the average of the apartment complex crime indices of all apartment complexes in the city and multiplying the average by 1.5.

Sec. 26-455. Mandatory crime reduction program; when required.

(a) An apartment complex must participate in a mandatory crime reduction program whenever the apartment complex's crime index determined in

accordance with section 26-453 exceeds the crime risk/safety threshold determined in accordance section 26-454 for all registered apartment complexes in the city, subject to exclusion under section 26-453(c).

(b) An apartment complex that exceeds crime risk/safety threshold shall at a minimum:

(1) Require all current and future tenants to sign a "Crime Free Lease Addendum";

(2) Hold at least one crime watch meeting per quarter on premises in cooperation with the Farmers Branch Police Department;

(3) Conduct (at their own expense) a criminal background check on all current and future residents;

(4) Conduct a credit check on all current and future residents; and

(5) Permit a minimum of two inspections of the apartment complex by the chief of police. The first inspection to evaluate what changes and improvements to the premises and operations of the apartment complex will assist in reducing the occurrence of crimes at the apartment complex. The second inspection will be conducted for the purposes of determining whether the complex is in compliance with this article.

(6) Participate in the Farmers Branch Police Criminal Trespass Enforcement Program. An owner or manager of the apartment complex shall execute a trespass affidavit on a form provided by the police chief for that purpose that authorizes the police department to enforce, on behalf of the apartment complex, all applicable trespass laws on the premises of the apartment complex. Trespass enforcement only applies to common areas of the property such as: parking lots, parks, playgrounds and pools. A true and correct copy of the trespass affidavit must be posted at the apartment complex in a manner and location so that it is clearly visible to the public at all times.

(7) Residential Security Survey: The owner or manager of a designated apartment complex shall distribute a residential security survey, on a form provided by the chief of police, to each resident of the apartment complex who is 18 years of age or older. Distribution shall be required within 30 days of being notified of a status as a designated apartment complex. The owner or manager of a

designated apartment complex shall file all returned surveys with the chief of police within 30 days after distribution.

(c) At the discretion of the chief of police additional remedial measures may be required of the apartment complex. In the case of a designated apartment complex reaching the status of repeat offender, the complex shall be required hire on site security as outlined below. The additional measures will be reasonable and based on various crime risks. Additional measures may include any or all of the following:

(1) Require the presence of on-site security personnel licensed by the Texas Private Securities Act, V.T.C.A., Occupations Code chapter 1702, or certified peace officers.

(2) Security lighting provided, maintained, and operated so that it adequately illuminates all parking areas, walkways, stairs, steps, doorways, and garbage storage areas to such a degree that the facial features of a person at least five feet tall are distinguishable from a distance of 35 feet.

(3) Landscaping. No bush or shrub on the premises of the apartment complex may be taller than 3½ feet. No tree on the premises of the apartment complex may have a canopy lower than six feet above the ground.

(4) Locked common areas. All enclosed common areas of the apartment complex (including but not limited to laundry rooms, club rooms, and fitness rooms) must be kept locked and may only be accessed with a key, key card, key pad, or similar device.

(5) Key control plan. A description of the plan and procedures for storing and accessing keys, key cards, and key codes to dwelling units, enclosed common areas, and other facilities of the apartment complex must be filed with the chief of police.

(6) Fencing. The perimeter of the premises of a designated apartment complex must be enclosed with a fence that is at least six feet high, unless a lower height is required by city ordinance.

(7) Pay phones. All pay phones on the premises of the apartment complex must be blocked to incoming calls or removed from the premises.

(d) An apartment complex must remain in the mandatory crime reduction program for six months or until the apartment complex's crime index falls below the crime risk/safety threshold.

Sec. 26-456. Notice of designation to participate in program.

(a) The chief of police shall provide written notice to the owner, operator, or property manager of each apartment complex designated to participate in the mandatory crime reduction program.

(b) The notice must include the following information:

(1) The name and address of the apartment complex;
(2) A statement that the apartment complex is required to participate in a mandatory crime reduction program, including a description of the fee and other requirements of the program;
(3) The community per capita crime index and crime risk threshold used to calculate the apartment complex's qualification for the mandatory crime reduction program;
(4) The actual occupancy number used to calculate the apartment complex's crime index;
(5) A statement that a mandatory inspection of the apartment complex premises will be conducted by the chief of police at a scheduled date and time; and
(6) The process for appealing the chief of police's decision requiring an apartment complex to participate in a mandatory crime reduction program.

(c) Designation of an apartment complex for participation in the mandatory crime reduction program and application of the requirements of this article are binding upon all subsequent owners or other transferees of an ownership interest in the apartment complex.

Sec. 26-457. Repeat Offender Status; Probation; Suspension of License

(a) An apartment complex that is required to participate in a mandatory crime reduction program under this article for a period of twenty four consecutive months shall be deemed a repeat offender under this article. The period of consecutive time accrued by any apartment complex currently participating in a mandatory crime reduction program under this article upon the adoption of this section 26-457 shall count and be included in calculating a twenty four consecutive month period.

(b) In addition to any other authority granted by this article or any other provision of the Code of Ordinances of the City of Farmers Branch, the building inspector or his/her designee may place the license of an apartment complex issued under chapter 26, section 26-112 of the Code of Ordinances on a probationary status if an apartment complex is deemed a repeat offender under section 26-457(a).

(c) The duration of the probationary status shall begin upon the mailing of a notice by the building inspector or by his/her designee of the initiation of the probationary status and shall continue until the apartment complex's crime index falls below the applicable crime risk/safety threshold established under this article and remains below the threshold for a period of not less than thirty consecutive days after the initiation of probation.

(d) Suspension of registration.

(1) If a complex fails to complete its probationary status within ninety days from initiation, the building inspector or his/her designee may place the license of such complex on suspended status. While under suspension, no unoccupied dwelling in the complex may be occupied and no occupied unit shall be occupied by the new tenants until the complex maintains a crime index below the crime risk/safety threshold established under this article for a minimum of ninety consecutive days after the initiation of suspension.

(2) If an apartment complex has been on suspended status one or more previous times within the thirty-six months immediately preceding the complex being placed on suspended status, no unit in the complex may be occupied by new tenants until the complex maintains a crime index below the crime risk/safety threshold established under this article for a minimum of one hundred and eighty consecutive days after the initiation of suspension.

Sec. 26-458. Appeals from designation; suspension.

(a) If the chief of police designates an apartment complex for participation in the mandatory crime reduction program pursuant to this article, this action is final unless the owner, operator, or property manager of the apartment complex files a timely written appeal with the city secretary not later than ten days after receiving notice of being a designated apartment complex.

(1) If the appeal of the chief of police's decision is based on changes in an apartment complex's occupancy rate, then the owner, operator, or property manager of the apartment complex shall, at the time of filing the appeal, also file with the city secretary and

the chief of police a copy of a current and valid lease for every occupied dwelling unit in the apartment complex.

(2) In deciding an appeal under this subsection (a), the city council is limited to the issue of whether the apartment complex's crime index is greater than the crime risk threshold calculated for all registered apartment complexes in the city for the particular types of crime that qualified the apartment complex for designation under section 26-456. The city council shall affirm the decision of the chief of police if the council finds that the apartment complex's crime index exceeds the applicable crime risk threshold and shall reverse the chief of police's decision if the council finds that the crime index does not exceed the applicable crime risk threshold.

(b) If the building inspector or his/her designee places an apartment complex's license on probationary or suspended status, this action is final unless the owner, operator, or property manager of the apartment complex files timely a written appeal with the city secretary not later than ten days after receiving notice of being a placed on said status.

(1) In deciding an appeal under this subsection (b), the city council is limited to the issue of whether the apartment complex's crime index has remained below the applicable crime risk/safety threshold established under this article for a minimum of thirty consecutive days after the initiation of the current probation and within ninety days following said initiation.

(c) If a written request for an appeal hearing is timely filed under this section with the city secretary within the ten-day limit, the city council shall hear the appeal. The city secretary shall set a date for the hearing within sixty calendar days after the date the appeal is filed.

(d) A hearing on appeal by the city council may proceed if a quorum of the city council is present. If a quorum is not present to conduct an appeal under this section on the date scheduled, the hearing shall be reset to next regular meeting of the city council.

(e) The city council shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply, provided that the evidence presented shall be limited to evidence as relevant to the scope of the issue on appeal as determined by the city council. Any dispute of fact will be decided on the basis of a preponderance of the evidence presented at the hearing.

(f) The city council's decision must be by a majority vote of the members present. Failure to reach a majority vote will leave the decision to the chief of police unchanged. The decision of the council is final, and no rehearing may be granted.

Sec. 26-459. Program fee.

A program fee of two thousand dollars ($2,000) will be charged to those complexes that are above the crime risk threshold to defray the costs incurred by the chief of police in administering and enforcing the mandatory crime reduction program. A separate program fee is required each time an apartment complex is designated to participate in the mandatory crime reduction program.

Sec. 26-460. Penalty.

A violation of any provisions of this article shall be deemed to be a misdemeanor and, upon conviction of such violation, such violation shall be punishable by a fine not to exceed two thousand dollars ($2,000). Each day on the provisions of this article are violated shall constitute a separate offense.

Secs. 26-461—26-470. Reserved."

SECTION 4. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. All provisions of the ordinances of the City of Farmers Branch reconcilably in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Farmers Branch not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 6. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinance as a whole.

SECTION 7. Except as otherwise provided herein, any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Five Hundred ($500) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 8. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE _____ OF _____, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(WLW:11/30/2016:TM81059v2)

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Staff Report

File Number: 16-319

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Study Session

In Control: City Council **File Type:** Report

Agenda Number: A.4

Receive a report from the Sustainability Committee prioritizing the items they will review during the next year and possibly bring to City Council for consideration.

BACKGROUND:
The Sustainability Committee was formalized by City Council on April 5, 2016. The Committee is composed of 9 residents of the city of Farmers Branch and 1 ex oficio position, Brookhaven College Director of Sustainability. The group has met and established sub committees and committee procedures. In addition, the committee has developed priorities for the sub committees to assess and bring to the Committee as a whole for deliberation and possible recommendation to City Council. This presentation will summarize their work to date as well as the provide City Council with their priorities for the coming year.

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Staff Report

File Number: 16-257

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Study Session

In Control: City Council **File Type:** Report

Agenda Number: A.5

Discuss agenda items for future City Council meetings.

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Staff Report

File Number: 16-318

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Ceremonial

In Control: City Council **File Type:** Procedural Item

Agenda Number: C.1

Recognition of Parks and Recreation Department staff for the award of Excellence in Maintenance on behalf of the Texas Recreation and Park Society.

BACKGROUND:

The Texas Recreation and Park Society (TRAPS) was founded over 78 years ago and is the major organization in Texas for Parks and Recreation professionals. Farmers Branch is part of the north region for TRAPS which includes most of north Texas from the metroplex to Texarkana. Each year the TRAPS North Region recognizes and honors individuals and organizations that made outstanding contributions to the field of parks and recreation.

At the recent conference for the North Region, Farmers Branch Parks and Recreation staff won the award for Excellence in Maintenance. The Department was honored for originality and innovation in development of the infrastructure for Farmers Branch Market at The Grove.

With a touch of creativity and exceptional skill, staff was able to design and construct an attractive, functional service area that was completed on time within budget. Developing the infrastructure for the venue meant adding electricity, water service, paved drive, storage shed and amenities.

More than 12,000 visitors experienced the Saturday morning festivities during the inaugural year of the Farmers Branch Market. Farmers Branch Market will return in 2017 with its mix of produce, meat and eggs along with artisan food and craft vendors.

This recognition demonstrates the quality, dedication, and professional ability of the Parks and Recreation team.

ATTACHMENTS:

1. TRAPS award photo
2. Fence project

TRAPS
TEXAS

RESTROOM

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16-305

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Ceremonial

In Control: City Council **File Type:** Report

Agenda Number: C.2

Receive an update from State Representative Matt Rinaldi regarding the upcoming Legislative Session.

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16-306

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Report

Agenda Number: G.1

Consider approving minutes of the City Council meeting held on November 15, 2016; and take appropriate action.

City of Farmers Branch

Meeting Minutes

City Council

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Tuesday, November 15, 2016 | 6:00 PM | Council Chambers

Study Session Meeting to be held at 3:00 PM in the Study Session Room

Presiding: 1 - Mayor Bob Phelps

Present: 5 - Mayor Pro Tem Harold Froehlich, Deputy Mayor Pro Tem Ana Reyes, Council Member John Norwood, Council Member Terry Lynne, Council Member Mike Bomgardner

Staff: - John Land Deputy City Manager, Amy Piukana City Secretary, Pete Smith City Attorney, Tom Bryson Communications Director, David Hale Police Chief, Allison Cook Economic Development Director, Andy Gillies Community Services Director, Marc Bentley City Engineer Public Works, Phillip Thomas Operations Manager, Denise Wallace, Library Director, Rachael Johnson Assistant to City Manager, Hugh Pender Building Official, Shane Davis Environmental Services and Solid Waste Manager, Steve Parker Fire Chief, Tim Dedear Deputy Fire Chief/Fire Marshal, Brian Beasley Human Resource Director, Sherrelle Evans-Jones Finance Director, Mitzi Davis Parks and Recreation Project Manager, and Kevin Muenchow Fleet and Facilities Director, Meredith Dowdy Parks and Recreation Special Projects Manager

A. STUDY SESSION

Mayor Phelps called the Study Session meeting to order at 3:00 p.m.

A.1 16-297 Discuss regular City Council meeting agenda items.

Deputy Mayor Pro Tem Reyes suggested postponing Agenda Item H.4 (Library Services Contract) to the December 13, 2016 City Council meeting. Deputy City Manager John Land replied noting this item could be tabled to the next City Council

meeting. Mayor ProTem Froehlich asked that the presentation be held tonight with a vote at the next City Council meeting.
After discussion, City Council agreed to postpone item H.4 (Library Services Contract) to the December 13, 2016 City Council meeting.

A.2 16-274 **Presentation on Farmers Branch event Philosophy.**

Parks and Recreation Special Project Manager Meredith Dowdy briefed City Council regarding this item. Ms. Dowdy reviewed the City's brand promise, current event philosophy, event classifications and top City events. Ms. Dowdy presented quick facts on the Farmers Branch Market, Date Night in the Park, Liberty Fest Stars & Strings, Bloomin' Bluegrass Festival & Chili Cook Off, Christmas Tour of Lights, Tastes & Tunes, Independence Day Celebration, Halloween in the Park, and Christmas Tree Lighting.

Council Member Bomgardner asked how many non-residents attended the Date Night in the Park. Ms. Dowdy explained a survey has not been conducted on that event, however; noted the demographics indicate millennials are attending this event. She explained the City markets this event through social media noting this has been very successful.

Council Member Bomgardner asked how the Farmers Market events generate revenue. Ms. Dowdy explained t-shirt sales, booth rentals, and tote bag sales all generate revenue.

Council Member Norwood explained the Blue Grass event overlaps with the Senior Center Bazaar event, noting the City needs to utilize cross marketing of events.

Council Member Bomgardner asked if childcare costs were included in the budget numbers provided. Ms. Dowdy explained staffing costs for childcare are not included.

Council Member Bomgardner asked if the Taste and Tunes event could be moved to early spring or late fall due to weather issues. Ms. Dowdy explained this event has been moved to three days in May (Thursdays).

Mayor Pro Tem Froehlich suggested discontinuing the pie eating contest and consider adding a Firehouse Theatre skit instead.

Deputy Mayor Pro Tem Reyes expressed concerns with overcrowding, lighting and visibility at the Halloween in the Park events. Mr. Harting explained the event has been a huge success, noting the City may need to implement a fee to non-residents to help generate revenue and reduce overcrowding.

Mayor Pro Tem Froehlich asked if overcrowding was due to social media marketing. Mr. Harting explained he feels the City events are well attended due to the level of service the city provides. He noted City facilities and amenities such as clean restrooms are exceptional. Mr. Harting explained the City sets high standards and provides free events, noting in the past, the philosophy has been to not charge for city events. He explained, if this philosophy changes, fees could added to help offset costs.

Deputy Mayor Pro Tem Reyes expressed gratitude towards City Staff for making these events a success.

Council Member Lynne explained marketing strategies need to be identified. He explained the environment is competitive and suggested charging fees for City events to help offset costs. He recommended targeting sponsors and utilizing the new marketing employee to assist with marketing City events.

Council Member Bomgardner suggested allowing residents to purchase an annual package which would include event parking passes and tickets to all City events.

Council Member Lynne suggested adding more vendors to the Farmers Market and allow barbecue sales and more food vendors to the event to increase traffic.

Mayor Pro Tem Froehlich asked if Liberty Plaza or the Star Center has been utilized for City events. Mr. Harting noted the City has used Liberty Plaza, but noted he has had to scale down to save money. Mr. Harting noted the Farmers Branch Market utilizes the Star Center parking, noting hockey events can be a challenge in regards to parking. Mr. Land explained one of the bond proposals included constructing a parking deck on the Star Center parking lot. Mr. Land explained with the increase in development to the area, this could be beneficial to the area.

Council Member Lynne stated by adding a multi-parking structure, this would allow more residents to utilize the Mustang restaurant area. Ms. Dowdy replied that the City used Liberty Plaza for the fireworks event this past year.

Mayor Pro Tem Froehlich asked if the City has too many events. Mr. Harting explained he will review City events and determine costs verses attendees to establish cost effectiveness.

A.3 16-263 **Receive an update regarding the City of Farmers Branch Demolition Rebuild Program.**

Economic Development Director Allison Cook briefed City Council regarding this item. Ms. Cook explained two options are being provided to help enhance the existing demolition rebuild program. Ms. Cook explained Option 1, allows a $10,000 cash grant with a seven year annual rebate. Ms. Cook explained Option 2 allows a Grant amount that is tied into the current home value (not land). She explained for home values up to $75,000 allows a $15,000 cash grant. She noted home values between $75,100 and $250,000 would allow for a $12,500 cash grant. She explained a home value of $250,100 plus would receive a $10,000 cash grant.

After discussion, Council Member Bomgardner recommended Option 1, to allow a $15,000 cash grant with a five (5) year rebate for home values at $100,000 or less. He recommended allowing a $12,500 cash grant for anything above the $100,000 price range.

Deputy City Manager John Land explained the Chapter 380 Policy would need to be amended with these changes. He further stated he will bring forward these amendments at the December 13, 2016 meeting for City Council approval.

A.4 16-296 **Receive a presentation and update on the Eastside Comprehensive Plan.**

Planning Manager Alexis Jackson briefed City Council regarding this item. Mr. Jackson noted the Farmers Branch Comprehensive Plan was adopted in 1989. The West Side Plan was adopted in 2003 and the Central Plan was adopted in 2012. Ms. Jackson reviewed the project timeline noting the vision of the Eastside will be a District with unique identity, based on a drivers mixture of uses that creates opportunities to live, work, do business, and participate in leisure activities for people already connected to the District and those who have yet to discover it. Ms. Jackson noted the City is working with the following consultants on this project, Mr. Brad Moulten with LaTerra Studio, Inc. and Ms. Abra Nusser with Ideation Planning.

Mr. Moulten reviewed the plan framework which included the following: 1) Character and Identity, 2) Economic Vitality, 3) Form and Land Use, 4) Shared Spaces, and 5) Mobility and Connectivity. He noted the following goals: Goal 1 – to be a vibrant destination with a unique character and identity, Goal 2 – to enhance and sustain a supportive business environment, Goal 3 – to establish a visually appealing, functional, and compatible District for people oriented spaces an synergistic development, Goal 4 – to create a system of shared spaces which positively contribute to the aesthetics, livability, vitality and functionality of the District, and Goal 5 – to become a cohesive destination of connected neighborhoods and shared spaces where traveling via multiple modes is effective and pleasant. Mr. Moulten explained the Eastside Market area has over 1,200 acres with the core portion being industrial with a wide range of additional uses.

Ms. Abra Nusser with Ideation Planning reviewed the future land use map. She explained the preferred commercial use types which indicated big box retail stores, restaurants, high density to mid-rise offices, hotels, entertainment, and high quality multi-family housing with ground floor commercial uses. She further explained the preferred Community Mixed Use is medium density, restaurants, retail, high density to mid-rise offices, hotels entertainment, high quality multi-family housing with ground floor commercial uses, and shared space plazas. Ms. Nusser explained the Community Mixed Use preferred use is live-work units, maker and innovator display and work spaces, business and restaurant incubators, offices, entertainment, restaurant and retail. Ms. Nusser reviewed the Parks and Open Space areas, intersection improvements, and branding strategy. She reviewed the short, medium and long term implementation plans. Ms. Nusser explained the following three tiered zoning strategies: Comp Plan, Comprehensive Zoning Ordinance updates for new alcohol related uses such as Brewery/Brewery Pub and 50/50 adjustment, and area specific overlay adjustments to remove 5/50 entirety.

City Council had no recommended changes and thanked staff for their work on this project.

City Council recessed for a break at 5:28 p.m. City Council reconvened into Regular Session at 5:41 p.m.

A.5 16-298 **Discuss agenda items for future City Council meetings.**

Deputy Mayor Pro Tem Reyes asked for an update regarding the Police Safety improvements. Council Member Norwood asked for a Justice Center update.

City Council recessed from study session at 5:49 p.m.

Mayor Phelps called the regular meeting to order at 6:00 p.m.

B. INVOCATION & PLEDGE OF ALLEGIANCE

Mayor Phelps led the invocation and Pledge of Allegiance.

C. REPORT ON STUDY SESSION ITEMS

Council Member Bomgardner provided a report on study session items.

D. CITY MANAGER'S REPORT AND ITEMS OF COMMUNITY INTEREST

Deputy City Manager John Land announced the following items of community interest:

- Nearly three tons of residents' documents were turned in for shredding at our semi-annual Document Destruction event two Saturdays ago at City Hall. Due to a last minute equipment issue on the part of the vendor, we were not able to shred the documents on site, but were able to seal them in containers where they were taken to a separate location for shredding. According to Action Shred, the 5,700 pounds of paper equaled the saving of 26 barrels of oil, 20,300 gallons of water, nine cubic yards of landfill space and 49 trees.
- A big thanks to everyone that came out last Friday for our annual Veterans Day Celebration at the Farmers Branch Senior Center. Once again, we had a capacity crowd that saluted our Veterans in ceremony and in song from our guests 'The Victory Belles.' The entire celebration, including the Victory Belles' performance will be available on FBTV and on YouTube later this week.
- And please note that all Farmers Branch offices and facilities will be closed on Thursday, November 24 in observance of the Thanksgiving Day holiday. There will be NO garbage or recycling collection that day. Most facilities remain closed on Friday, November 25 with the exception of the Community Recreation Center, open 6 a.m. to 5 p.m. and the Historical Park, open 8 a.m. to 5 p.m. However, the annual Christmas Tour of Lights gets underway that evening at 6:30 p.m.
- Then the Christmas season gets off to its official start on Saturday, December 3 with our annual Christmas Tree Lighting festivities at the Farmers Branch Historical Park. Kids can slide down a snow hill, visit with Santa, have cookies and hot chocolate and more, leading up to the lighting of the Christmas Tree and our annual Christmas fireworks show. Gates open at 4 p.m. and admission is free.
- We do have a slate of special City Council meetings coming up. Please note special meetings planned for November 29 to discuss possible bond proposals, December 6 to discuss project planning for the proposed west side Tax Reinvestment Zone and January 9 to discuss funding of that Tax Reinvestment Zone. All special meetings are planned for 6 p.m. in the Study Session Room here at City Hall. Additionally, there is only one regularly scheduled meeting of the City Council in December, on Tuesday, December 13. With that said, all meetings are subject to change and anyone desiring more info should call 972.247.3131.
- You can sign up for eNews at **farmersbranchtx.gov** to have current City news and information delivered directly to your eMail box.

- Monday, November 7th a roof collapsed at BSN and the Economic Development Department, Fire Department and Building Department all pulled together to provide relief.

E. CITIZEN COMMENTS

The following citizens wished to speak under citizen comments:
Ms. Clare Connally read an excerpt from Dr. Gilbert's historical journal in an effort to educate everyone about our history.

Former Mayor John Dodd spoke complementing the Police Department and urged City Council to be transparent and clear regarding the bond projects being proposed.

F. CONSENT ITEMS

F.1 16-299 **Consider approving minutes of the City Council meeting held on November 1, 2016; and take appropriate action.**

F.2 R2016-101 **Consider approving Resolution No. 2016-101 reappointing Dr. Paul Lonquist and Dr. George Moninger to serve as the City of Farmers Branch appointees to the Metrocrest Hospital Authority Board of Directors; and take appropriate action.**

F.3 R2016-102 **Consider approving Resolution No. 2016-102 awarding a contract to Curtco, Inc. for Crack and Joint Sealing Services through a Local Government Purchasing Cooperative contract; and take appropriate action.**

F.4 R2016-103 **Consider approving Resolution No. 2016-103 authorizing the City Manager to execute a Project Specific Agreement with Dallas County for roadway repairs and improvements to Alpha Road between Midway Road and Inwood Road; and take appropriate action.**

F.5 R2016-106 **Consider approving Resolution No. 2016-106 authorizing the City Manager to sign the First Amended and Restated Joint Fire Training Center Interlocal Agreement among the cities of Carrollton, Coppell, Farmers Branch and the Town of Addison; and take appropriate action.**

F.6 R2016-108 **Consider approving Resolution No. 2016-108 authorizing the City Manager to execute a Communications Facilities License Agreement between the City of Farmers Branch and New Cingular Wireless PCS, LLC; and take appropriate action.**

F.7 R2016-109 **Consider approving Resolution No. 2016-109 authorizing the City Manager to execute a Communications Facilities License Agreement between the City of Farmers Branch and Clear Wireless LLC; and take appropriate action.**

F.8 ORD-3399 **Consider adopting Ordinance No. 3399 amending Chapter 2 of the Code of Ordinances, Administration, Article II, Boards, Committees, and Commissions, amending Section 2-185, relating to meeting dates for the Library Board; and take appropriate action.**

Motion made by Mayor Pro Tem Froehlich to approve Consent Items F.1 through F.8, as presented. Motion seconded by Council Member Bomgardner. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

G. PUBLIC HEARINGS

G.1 ORD-3401 **Conduct a public hearing and consider site plan approval with a specific use permit for Luis Carrasco/Arbors and Patios allowing outdoor storage and display for properties located at 13500 and 13512 McClintock Street; and take appropriate action.**

Community Services Director Andy Gillies briefed City Council regarding this item. Mr. Gillies explained this tract of land is comprised of 0.356 acres (15,527 square feet) containing two lots. Mr. Gillies explained the applicant is proposing to add an outdoor display and outdoor storage and on-site employee parking lot.

There were no citizens that wished to speak in support and/or opposition to the proposed case.

Council Member Lynne made a motion to close the Public Hearing. Motion seconded by Mayor Pro Tem Froehlich. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

Council Member Lynne made a motion to approve Ordinance No. 3401, as presented. Motion seconded by Deputy Mayor Pro Tem Reyes. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

G.2 16-PL-007 **Conduct a public hearing and consider a request for final plat approval of Metropolitan Southeast Addition, Lots 1 and 2, Block A; and take appropriate action.**

Community Services Director Andy Gillies briefed City Council regarding this item. Mr. Gillies explained the property was originally platted as a single plat. He noted the property was sold and split between two separate owners by a survey. He explained the final plat separates the property into two lots.

Mayor Phelps opened the public hearing. There were no citizens that wished to speak.

Motion made by Council Member Norwood to close the public hearing and approve the final plat, as presented. Motion seconded by Mayor Pro Tem Froehlich. Motion prevailed by the following vote:

Aye: **5** - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

G.3 16 PL-008 **Conduct a public hearing and consider a request for final plat approval of Komerica Addition, Lot 1, Block A; and take appropriate action.**

Community Services Director Andy Gillies briefed City Council regarding this item. Mr. Gillies noted the property was previously platted and is presently part of a remaining portion of Lot 1, Block 1 of Valley View Commerce Park Addition. He further stated the owner is requesting a replat in order to dedicate an easement necessary for a water line loop to serve the property.

There were no citizens that wished to speak. Motion made by Mayor Pro Tem Froehlich to close the public hearing. Motion seconded by Deputy Mayor Pro Tem Reyes. Motion prevailed by the following vote:

Aye: **5** - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

Motion made by Mayor Pro Tem Froehlich to approve the final plat of Komerica Addition, Lot 1, Block A, as presented. Motion seconded by Council Member Lynne. Motion prevailed by the following vote:

Aye: **5** - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

H. REGULAR AGENDA ITEMS

H.1 R2016-110 **Consider approving Resolution No. 2016-110 authorizing a Commercial Façade Revitalization Grant Agreement for 4464 sigma Road; and take appropriate action.**

Economic Development Manager Allison Cook briefed City Council regarding this item. Ms. Cook introduced the applicant Mr. and Mrs. Thornton who spoke noting they are moving the Hudson Peters Commercial headquarters to 4464 Sigma Road from their current location in Addison.

Motion made by Council Member Lynne to approve Resolution 2016-110, as presented. Motion seconded by Council Member Bomgardner. Motion approved by the following vote:

Aye: **5** - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

H.2 16-302 **Presentation by Carol Dingman on behalf of the Historical Park and Preservation Board regarding a future Museum Conference Center.**

Ms. Carol Dingman provided a presentation on behalf of the Historical Park and Preservation Board regarding a future Museum Conference Center. Ms. Dingman

provided history noting in the early 1980's the City Council developed a vision for the use of the new Hotel Tax Fund revenue. She noted in 1981 City Council agreed to purchase concept plan in 1983. She further stated in 1984, the City Council appointed the first Historical Park and Preservation Board. Ms. Dingman noted the Dodson house and property were added to the Park in 1981, and the school house, Depot and church were added in 1985. She explained the park was dedicated in 1986. Ms. Dingman noted the Historical Park's mission is to collect, preserve and interpret the history of the United States and Texas with an emphasis on Peters Colony and Farmers Branch. She further stated the secondary mission is to become a destination that generates hotel nights. Ms. Dingman explained in order to achieve that mission, the city must market through programming and events. She noted the City needs a large space that could be used for private event rentals such as weddings. She further stated the DMOProz consultant noted the Historical Park won't reach its potential until a museum and more educational programming is added. She noted the Bond Committee supports the need for a $7 million "event" space at the Park. Ms. Dingman summarized explaining the Historical Preservation and Restoration Board has recommended a Museum and Conference Center with lobby area, Museum store, classroom, kitchen and storage. She asked that a proposition be added on the May 2017 Bond Election ballot. She explained the City could use Hotel tax money to issue revenue bonds and a combination of hotel tax and general revenue debt. She further stated the City could raise monies from the private sector and accept donations for tax purposes.

Council Member Bomgardner asked if there were numbers for revenue and expenses. Ms. Dingman replied that the Park Revenue Committee will research numbers. Council Member Bomgardner asked what the estimated cost of the building would be. Deputy City Manager John Land replied the estimated cost would be approximately $6 million.

Council Member Bomgardner noted the consulting groups were looking at a 19,000 sq. ft. building explaining a 75,000 sq.ft. building in his opinion, is too large. He asked if building renovations had been considered noting this could be very costly to refurbish an existing building. He further stated he does not wish the City to be involved with wedding events, however; he does support a museum. Ms. Dingman explained the Hotel Tax consultants recommended utilizing the historical park and adding a conference center and noted once west side is developed, more residents will utilize the facility.

Deputy Mayor Pro Tem Reyes asked for better cost estimates to be provided.

Council Member Lynne asked what amount is collected from Hotel/Motel tax annually noting corporate sponsorship could be approached. Mr. Land replied the City receives approximately $2.2 million annually.

Deputy Mayor Pro Tem Reyes explained the City needs to preserve its history, asking if there is a percentage of the building that could be leased out as a restaurant. Ms. Dingman replied that many museums have gift shops, noting this would help generate revenue.

Council Member Bomgardner asked what the repair estimate was for the Gilbert house. Parks and Recreation Director Jeff Harting explained he is currently working with a company to provide cost estimates.

Mr. Harting noted the City is limited to what can be done with the Historical Park property due to parking.

Deputy Mayor Pro Tem Reyes asked if road closure had been considered to help create green space. Mr. Harting explained in the past a road closures became an issue with neighboring residents.

Mr. Land asked if City Council would like to tour the Buchanan Printing Building at the November 29th City Council meeting. Council agreed to meet for a tour.

The following citizens wished to speak regarding this item.

Ms. Claire Connally thanked Ms. Dingman for her presentation and spoke in support of this item.

Ms. Bitsy Laney spoke in support of this item.

H.3 16-304 **Presentation by Charles Sullivan on behalf of the Farmers Branch Manske Library Board regarding a Library project being considered for the future Bond Election.**

Mr. Charles Sullivan briefed City Council regarding this item. Mr. Sullivan spoke on behalf of the Farmers Branch Manske Library Board regarding a Library project being considered for the future Bond Election. He asked that City Council consider including the Library in the future Bond election. He noted a new Library Building would be beneficial for residents, noting if funds are not available, a remodel would be a second option. He explained the Library needs technology upgrades which includes wiring and a computer lab. He further stated that interior partitions are recommended in the children's areas to add more security. He explained more meeting rooms are needed and suggested an overall face lift of the building to include new signage.

Mr. Sullivan explained parking and building access is inadequate. He explained residents are parking across the street and lighting is not adequate in the area. Mr. Sullivan explained approximately $7 million dollars is the estimated cost for these improvements.

Deputy Mayor Pro Tem Reyes asked if other libraries are utilizing interactive tables and technology and how we compare to other cities. Mr. Sullivan explained the vision of the Library is to update and utilize more interactive technology, noting this is the future of Libraries.

Council Member Lynne asked if the Library has received an increase of Town of Addison residents utilizing the facility. Library Director Denise Wallace explained Town of Addison residents prefer the Farmers Branch Library over the Dallas Library noting they do receive a choice. She further stated they must obtain a voucher from Town of Addison in order to obtain a Library Card in Farmers Branch. She explained the City receives approximately $100,000 a year in revenue.

Council Member Bomgardner asked what the total number of Library users are. Ms. Wallace replied approximately 34,000 people. Council Member Bomgardner noted many users are not residents and this is costly to our residents.

Deputy Mayor Pro Tem Reyes asked Mr. Sullivan which part of the project is most costly. Mr. Sullivan replied construction of the new building would be more costly. He noted if the entire facility was renovated the estimated cost would be $7 million.

H.4 R2016-105 **Consider approving Resolution No. 2016-105 authorizing the City Manager to negotiate and execute the second amended and restated agreement for Library services with Library Systems & Services; and take appropriate action.**

Assistant to the City Manager Rachael Johnson briefed City Council regarding this item. Ms. Johnson noted in 2011 the City outsourced the operation of the Manske Library to Library Systems & Services Incorporated (LSSI). She explained in 2013, City Council renewed the agreement for a 3-year term that expires December 31, 2016. She explained during the term of the agreement LSSI was sold to Argosy Private Equity and is now called Library Systems & Services (LSS). She explained from the City's perspective, this change in ownership has not affected the quality of Library services received.

Ms. Johnson explained the proposed agreement is a 5-year contract that would begin January 1, 2017 and expire December 3, 2021. She noted this includes a 2.5% ($30,233.33), increase from the previous year, attributed to the rise in the Employee Cost Index (ECI) for the DFW Metroplex. Ms. Johnson explained the proposed annual cost for 2016 is $1,239,566.33. She noted the price of the agreement is negotiated on a yearly basis, or may renew at the same amount as the previous year, plus an additional amount equal to the percentage increase in the ECI but not to exceed 5%.

Ms. Johnson explained this new agreement includes, the purchase and installation of equipment that will allow the Library to offer automated self-check-in to patrons, valued at $72,519.60. She explained the equipment is the second phase of the automated self-check infrastructure common in modern libraries. Ms. Johnson noted the equipment is being provided at LSS cost, it will be amortized over the life of the contract. She explained should the City discontinue using LSS, the City would be responsible for the remaining balance owed. She noted, once the five-year amortization period is over, LSS will turn over the ownership of the equipment to the City.

Council Member Norwood asked if there were any other vendors considered suggesting the City should survey the market and see if there are other options. Ms. Johnson replied she will research to see if any other vendors provide this service.

Council Member Bomgardner asked how many other Libraries the LSS manages. Ms. Johnson replied 82.

Deputy Mayor Pro Tem Reyes asked if the Library meets State guidelines. Ms. Wallace explained the Library does meet all required guidelines.

H.5 R2016-107 **Consider approving Resolution No. 2016-107 awarding a unit price contract for Fiscal Year 16-17 Annual Concrete Repair Project to Jim Bowman Construction Company, LP in the amount of $792,426.00; and take appropriate action.**

City Engineer Marc Bentley briefed City Council regarding this item. Mr. Bentley explained the City received four (4) bids, however; had issues with the lowest bidder, noting they had errors in their calculations. He noted the second lowest bidder was chosen, Jim Bowman Construction. He further explained the Jim Bowman Construction Company, LP has adequate qualifications and has done similar work for the City on previous projects. He noted this contract is for a one year period with a renewal option for two additional one year periods.

After discussion, Council Member Lynne made a motion to approve Resolution No. 2016-107, as presented. Motion seconded by Deputy Mayor Pro Tem Reyes. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

I. ADJOURNMENT

Mayor Pro Tem Froehlich made a motion to adjourn the meeting at 8:17 p.m. Motion seconded by Deputy Mayor Pro Tem Reyes. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

The meeting adjourned at 8:17 p.m.

_____
Mayor

ATTEST:

_____
City Secretary

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-097

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: G.2

Consider approving Resolution No. 2016-097 authorizing the City Manager to execute an amendment to the agreement with Redflex Traffic Systems for the continued provisioning of photographic red light enforcement services; and take appropriate action.

BACKGROUND:
On September 5, 2006, the City Council approved an automated system providing for photographic red light enforcement and entered into an agreement with Redflex Traffic Systems to provide said system. On December 4, 2012, City Council approved an amendment to the agreement extending the term four years and changing the compensation structure to comply with State law. Six (6) intersections currently have enforcement cameras monitoring seven (7) approaches and the system has been successful in reducing accidents at and near those signal light intersections. The current contract expires December 31, 2016, and will require an amendment to extend the term.

DISCUSSION:
Over the ten year period that the signal light enforcement camera system has been in place, the overall accident rate for those intersections has gone down. Accidents near the intersections have dropped 20%. Accidents due to a ran-red light violation have dropped 27%. Due to the success of reducing accidents at signal light intersections, it is desirable to continue the red light photographic enforcement system.

RECOMMENDATION:
City Administration recommends adopting Resolution No. 2016-097 authorizing the City Manager to execute an amendment to the agreement with Redflex Traffic Systems for the continued provisioning of photographic red light enforcement services.

POSSIBLE COUNCIL ACTION:
1. I move to approve adopting Resolution No. 2016-097 authorizing the City Manager to execute an amendment to the agreement with Redflex Traffic Systems.
2. I move to approve adopting Resolution No. 2016-097 authorizing the City Manager to execute an amendment to the agreement with Redflex Traffic Systems, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Resolution 2016-097
2. Second Amendment to Original Agreement

RESOLUTION NO. 2016-097

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A SECOND AMENDMENT TO THE AGREEMENT WITH REDFLEX TRAFFIC SYSTEMS, INC. FOR PHOTO RED LIGHT ENFORCEMENT PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 5, 2006, the City Council approved an automated system providing for photographic red light enforcement for up to twenty intersections throughout the City and entered into an agreement with Redflex Traffic Systems, Inc. to provide said system; and

WHEREAS, on December 4, 2012, the City Council approved and entered into the First Amendment to the Agreement Between the City of Farmers Branch, TX and Redflex Traffic Systems, Inc. for Photo Red Light Enforcement Program for the purpose of extending the term of the agreement and changing the funding model to comply with State law; and

WHEREAS, the City Council has been presented with a proposed second amendment to the agreement further extending the term of the agreement and updating the notice address for Redflex Traffic Systems, Inc.; and

WHEREAS, the City Council of the City of Farmers Branch, Texas, finds it to be in the public interest to approve the foregoing amendment as presented;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to sign on behalf of the City the "Second Amendment to the Agreement between the City of Farmers Branch, TX and Redflex Traffic Systems, Inc. for Photo Red Light Enforcement Program" substantially in the form attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2. This Resolution shall become effective immediately upon its approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:	APPROVED:
_____	_____
Amy Piukana, City Secretary	Bob Phelps, Mayor

APPROVED AS TO FORM:

_____

Peter G. Smith, City Attorney
(KBL:11/10/16:78684)

Resolution No. 2016-097
Exhibit "A"

SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF FARMERS BRANCH, TX AND REDFLEX TRAFFIC SYSTEMS, INC. FOR PHOTO RED LIGHT ENFORCEMENT PROGRAM

This **Second Amendment** ("Second Amendment") is made as of the last date of the signatures contained herein ("the Effective Date") to the Agreement for Photo Red Light Enforcement Program executed on or about September 5, 2006 and amended on December 6, 2012 (collectively, the "Agreement"), by and between Redflex Traffic Systems, Inc. ("Redflex"), a Delaware Corporation, and the City of Farmers Branch, Texas ("Customer"), a Texas home rule municipality, individually the "Party" and collectively referred to as the "Parties," by and through their respective authorized representatives.

RECITALS

WHEREAS, Redflex and Customer entered into the Agreement between the City of Farmers Branch and Redflex Traffic Systems Inc. for Photo Red Light Enforcement Program on September 5, 2006, and amended on December 6, 2012; and

WHEREAS, the Parties desire to further amend the Agreement as set forth below.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I.
AMENDED TERMS AND CONDITIONS

1.1 **Extension of Term**. Section 2 of the Agreement is hereby amended to read as follows:

> **"2.** **Term**. The term of the Agreement shall be extended for an additional one (1) year ("Extended Term") commencing on the 1st day of January, 2017, and continuing through the 31st day of December, 2017. Thereafter, the Agreement shall automatically renew for up to three (3) additional one (1) year terms, unless Customer provides Redflex written notice of non-renewal at least thirty (30) days prior to expiration of the then current term."

1.2 **Termination for Cause**. Section 6.1 of the Agreement is hereby amended to read as follows:

> 6.1 **TERMINATION FOR CAUSE:** Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state

statutes are amended to prohibit or substantially change the operation of photo red light enforcement systems; (ii) any court having jurisdiction over the City rules, or a state or federal statute or judicial decision declares, that results from the Redflex System of photo red light enforcement are inadmissible in evidence (iii) any court having jurisdiction over Customer issues a non-appealable, final judgment declaring that Customer's photo red light enforcement program is unenforceable because it is unconstitutional or because it violates one or more local, state, or federal laws; or (iv) the other party commits any material breach of any of the provisions of this Agreement. A non-appealable, final judgment is a final judgment that cannot be appealed because no further right or option to appeal exists for reasons other than a Party's action or inaction in filing a notice of appeal or otherwise preserving an appeal. In the event of a termination due to Section 6.1(i), 6.1(ii), or 6.1(iii) above, Customer shall be relieved of any further obligations for payment to Redflex. In the event of a termination due to Section 6.1(iv) above, either Party shall have the right to remedy the cause for termination within forty-five (45) calendar days (or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

1.3 Notices. Section 9 of the Agreement is hereby amended to change the Notice address for Redflex to the following:

Redflex Traffic Systems, Inc.
Attn: Legal Department
5651 W. Talavi Blvd., Suite 200
Glendale, AZ 85306
Facsimile: (623) 207-2056
Email: legaldepartment@redflex.com

II.
MISCELLANEOUS

2.1 Enforceability of Non-Amended Terms and Conditions. Except as expressly amended in writing in this Second Amendment, the terms and conditions of the Agreement and any and all amendments, attachments and exhibits attached thereto and incorporated therewith by reference shall be unchanged and shall remain enforceable and in full force and effect. Any capitalized terms not defined in the Second Amendment shall have the meanings ascribed to them in the Agreement.

2.2 Effective Date. This Second Amendment shall become effective on the date it bears the signatures of the authorized representatives of all of the Parties.

[Signature Page to Follow]

Resolution No. 2016-097
Exhibit "A"

EXECUTED this _____ day of _____, 2016

CITY OF FARMERS BRANCH, TEXAS

By: _____
Charles S. Cox, City Manager

Attest:

_____
Amy Piukana, City Secretary

Approved as to Form:

_____
Peter G. Smith, City Attorney
(kbl:VT:11/8/16:76665)

EXECUTED this _____ day of _____, 2016.

REDFLEX TRAFFIC SYSTEMS, INC.

By:_____

Name: _____

Title: _____

SECOND AMENDMENT TO THE AGREEMENT
BETWEEN
THE CITY OF FARMERS BRANCH, TX
AND
REDFLEX TRAFFIC SYSTEMS, INC.
FOR
PHOTO RED LIGHT ENFORCEMENT PROGRAM

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[Signature Page to Follow]

EXECUTED this _____ day of _____, 2016

CITY OF FARMERS BRANCH, TEXAS

By: _____
Charles S. Cox, City Manager

Attest:

_____
Amy Piukana, City Secretary

Approved as to Form:

_____
Peter G. Smith, City Attorney
(kbl:VT:11/8/16:76665)

EXECUTED this _____ day of _____, 2016.

REDFLEX TRAFFIC SYSTEMS, INC.

By:_____

Name: _____

Title: _____

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-121

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: G.3

Consider approving Resolution No. 2016-121 abandoning a utility easement located on property both within the City limits of Farmers Branch and the City of Dallas; and take appropriate action.

BACKGROUND:

MCI2 Land, Ltd. and Mercer Crossing Industrial Land, Ltd. are the owners of a 20.026 acre tract of land on the south side of Morgan Parkway, between IH35E and the BNSF railroad right of way. The property is presently part of Block B, Westside Addition, Section 2, platted in 2006 in Farmers Branch, and is also part of land under the same ownership within the city limits of Dallas.

DISCUSSION:

The owners desire to plat the property lying in both cities as Mercer Business Park East No.3. The proposed plat will be dedicated to and approved by both the City of Farmers Branch and the City of Dallas. The building improvements proposed for construction on the property will also be located in both cities.

In order to develop the property, it is necessary for the City of Farmers Branch to abandon a utility easement that was granted to Farmers Branch in 1987 for a sanitary sewer line. Sewer improvements were never constructed and there is no present or future need for the easement.

Since the easement was granted to Farmers Branch as a utility easement, it was necessary to obtain abandonment permission from AT&T, Time Warner, Oncor, and Atmos. Those utilities have given permission to abandon the easement. Resolution No. 2016-121 provides for the full abandonment of the of the easement.

The abandonment of the easement is consistent with the Texas Local Government Code and the City's platting requirements and also consistent with the City's Guiding Principles; to provide strong, thriving commercial and residential neighborhoods through planning, land use, development, code enforcement, revitalization activities and programs.

RECOMMENDATION:

City Administration recommends approval of Resolution No. 2016-121 abandoning the utility easement located on property both within the city limits of Farmers Branch and the City of Dallas.

POSSIBLE COUNCIL ACTION:

1. I move to approve Resolution No. 2016-121 abandoning a utility easement on property located in Farmers Branch and Dallas.
2. I move to approve Resolution No. 2016-121 abandoning a utility easement on property

located in Farmers Branch and Dallas, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Information Memorandum
2. Location Map
3. Resolution No. 2016-121

FARMERS BRANCH

LOCATION MAP

NORTH

Date: 11/22/2016

RESOLUTION NO. 2016-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH RELEASING AND VACATING THAT CERTAIN UTILITY EASEMENT LOCATED IN THE CITY OF FARMERS BRANCH ACROSS WESTSIDE ADDITION SECTION 2, BLOCK B AND ACROSS DALLAS CITY BLOCK A/6579 IN THE CITY OF DALLAS; PROVIDING FOR THE FURNISHING OF A CERTIFIED COPY OF THIS RESOLUTION FOR RECORDING IN THE OFFICIAL PUBLIC RECORDS OF DALLAS COUNTY, TEXAS, AS A RELEASE AND QUITCLAIM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the current owner of the underlying fee title to property burdened by a utility easement for sanitary sewer improvements conveyed to the City of Farmers Branch ("City") by instrument dated September 22 1987, and recorded October 27, 1987, in **Volume 87208, Page 4090, Deed Records, Dallas County, Texas** (the "Easement") has requested the City vacate, abandon, or otherwise quitclaim any interest the City may have in the Easement in order to allow the replatting and development of said property without the encumbrance created by the Easement; and

WHEREAS, the City has removed from service and abandoned its sanitary sewer main within the Easement and no other public utility has placed any facilities within the Easement or otherwise made an actual appropriation of the Easements by entry, use, or improvement; and

WHEREAS, the City Council of the City of Farmers Branch, Texas, acting pursuant to law and upon the request of said owner finds it to be in the public interest to abandon and quitclaim the City's interest in the Easement and is of the opinion and finds the Easement is not needed for public use and should be abandoned and vacated, subject to the reservations and conditions of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City of Farmers Branch hereby abandons and quitclaims all right, title, and interest in and to the Easement and the property interests conveyed therein to the City.

SECTION 2. The City of Farmers Branch does not by this Resolution abandon any other interest other than that described in the Easement.

SECTION 3. The City Secretary is authorized and directed to prepare a certified copy of this Resolution and record this Resolution in the Official Public Records of Dallas County, Texas, which shall serve as the quitclaim and release of the Easement by the City of Farmers Branch, Texas, and all rights, title and interests described therein, subject to the limitations and reservations of this Resolution.

SECTION 4. This Resolution shall be effective immediately upon final passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:11/21/16:81635)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3405

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Ordinance

Agenda Number: G.4

Consider adopting Ordinance No. 3405 approving the 2015 International Building Code as amended; and take appropriate action.

BACKGROUND:
Since March of 2014 the City has been using the 2012 International Building Code (IBC). Model construction codes such as the IBC are updated and re-published on a three year cycle. Staff is recommending updating to the most current edition, the 2015 International Building Code. Some notable changes to the 2015 IBC are a delineation of "Tornado Alley" and the requirement to add tornado shelters to new schools and new first responder facilities. Currently, all of our neighboring municipalities have adopted and are enforcing the 2015 IBC with the exception of the City of Coppell and the Town of Addison.

RECOMMENDATION:
City Administration recommends approval of Ordinance No. 3405 as presented

POSSIBLE COUNCIL ACTION:
1. I move to approve Ordinance No. 3405 as presented.
2. I move to approve Ordinance No. 3405 with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Ordinance No. 3405

ORDINANCE NO. 3405

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 22 TITLED "BUILDINGS AND BUILDING REGULATIONS" BY AMENDING ARTICLE III TITLED "CONSTRUCTION STANDARDS" TO ADOPT THE PROVISIONS OF THE 2015 EDITION OF THE INTERNATIONAL BUILDING CODE WITH AMENDMENTS AND APPENDIX E TITLED "SUPPLEMENTARY ACCESSIBILITY REGULATIONS", APPENDIX F TITLED "RODENT PROOFING", APPENDIX G TITLED "FLOOD RESTRAINT CONSTRUCTION" AND APPENDIX J TITLED "GRADING"; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS ($2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known generally as the "International Codes"); and

WHEREAS, the City of Farmers Branch has been involved throughout the development process of the International Codes through participation with the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG); and

WHEREAS, the creation of the 2015 editions of the International Codes by the ICC was in conjunction with the International Conference of Building Officials (ICBO), the organization whose codes the City of Farmers Branch has adopted since the 1970s; and

WHEREAS, the International Codes have been reviewed by the NCTCOG and City staff; and

WHEREAS, the City's building and construction codes are intended to be updated periodically, with the 2015 editions of the International Codes being the most current published building and construction codes for which local amendments have been developed; and

WHEREAS, the City Council of the City of Farmers Branch has determined that it is in the best interest of the citizens of the City of Farmers Branch to adopt the 2015 editions of the International Codes, as stated herein, as the minimum standards for the construction, use, occupancy and maintenance of buildings and structures within the City limits, as set forth herein, and to adopt local amendments to said codes in order to account for unique local practices and/or conditions relating to the design and construction of structures within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Chapter 22 titled "Buildings and Building Regulations" of the Code of Ordinances of the City of Farmers Branch, Texas, is amended by amending Article III titled "Construction Standards" by adopting the provisions of the 2015 Edition of the International Building Code with amendments and Appendix E titled "Supplementary Accessibility Regulations", Appendix F titled "Rodent Proofing", Appendix G titled "Flood Restraint Construction" and Appendix J titled "Grading", to read as follows:

"**CHAPTER 22. BUILDINGS AND BUILDING REGULATIONS**

ARTICLE III. CONSTRUCTION STANDARDS

Sec. 22-86. **Adoption of International Building Code; purpose.**

There is hereby adopted by the City of Farmers Branch, Texas, for the purpose of establishing rules and regulations for the design, quality of materials, erection, construction, installation, alteration, repair, location, relocation, replacement, conversion, addition to, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all building or structures, the 2015 *International Building Code*, published by the International Code Council, including Appendix E "Supplementary Accessibility Regulations", Appendix F "Rodent Proofing", Appendix G "Flood Restraint Construction" and Appendix J "Grading"; with the exception of such sections thereof as are hereafter deleted, modified or amended by this Ordinance, and the same are hereby adopted and incorporated herein, the same as if entirely set out at length herein, and from the date of which this Ordinance shall take effect, the provisions hereof shall be controlling within the corporate limits of the City of Farmers Branch, Texas. This code shall be known as the "Building Code" or the "Farmers Branch Building Code".

Sec. 22-87. Local Amendments to International Building Code.

For purposes of enforcement of the provisions of the Building Code within the incorporated limits of the City, the following sections, paragraphs, and sentences of the 2015 Edition of the International Building Code are hereby amended as follows:

Section 101.4 is amended to read as follows:

101.4 Referenced codes. The other codes listed in Sections 101.4.1 through 101.4.6 and referenced elsewhere in this code, when specifically adopted, shall be considered part of the requirements of this code to the prescribed extent of each such reference. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference to NFPA 70 or the Electrical Code shall mean the Electrical Code as adopted.

Section 101.4 is amended by adding a new Section 101.4.7 to read as follows:

101.4.7 Electrical. The provisions of the Electrical Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

Sections 103 and 103.1 is amended by replacing the phrase "Department of Building Safety" with "Building Inspections Department" where it appears.

Section 105.2 is amended to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

1. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
2. Temporary motion picture, television and theater stage sets and scenery.
3. Prefabricated swimming pools accessory to a Group R-3 occupancy, as applicable in §101.2, which are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (19 000 L) and are installed entirely above ground.
4. Swings and other playground equipment accessory to one-and two-family dwellings.
5. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Section 109 is amended by adding new Sections 109.7, 109.8, 109.8.1, 109.8.2 and 109.9 to read as follows:

109.7 Re-inspection Fee. A re-inspection fee as established by city council resolution may be charged when:

1. The inspection called for is not ready when the inspector arrives;

2. No building address or permit card is clearly posted;

3. City approved plans are not on the job site available to the inspector;

4. The building is locked or work otherwise not available for inspection when called;

5. The job site is red-tagged twice for the same item;

6. The original red tag has been removed from the job site.

7. Failure to maintain erosion control, trash control or tree protection.

8. Concealing work without first obtaining required inspections.

Any re-inspection fees assessed shall be paid before any more inspections are made on that job site.

109.8 Work without a permit.

109.8.1 Investigation. Whenever work for which a permit is required by this code has been commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for such work.

109.8.2 Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code or the city fee schedule as applicable. The payment of such investigation fee shall not exempt the applicant from compliance with all other provisions of either this code or the technical codes nor from penalty prescribed by law.

109.9 Unauthorized cover up fee. Any work concealed without first obtaining the required inspection in violation of Section 110 shall be assessed a fee as established by the city fee schedule.

Section 110.3.5 is deleted.

Section 202 is amended by amending the definitions of "Ambulatory Health Care Facility," "Atrium," "High-Rise Building," and "Special Inspector" to read as follows:

AMBULATORY CARE FACILITY. Buildings or portions thereof used to provide medical, surgical, psychiatric, nursing or similar care on a less than 24-hour basis to individuals who are rendered incapable of self-preservation by the services provided. This group may include but not be limited to the following:

- Dialysis centers
- Sedation dentistry
- Surgery centers
- Colonic centers
- Psychiatric centers

ATRIUM. An opening connecting three or more stories… {Balance remains unchanged}

HIGH-RISE BUILDING. A building with an occupied floor located more than 55 feet (16 764 mm) above the lowest level of fire department vehicle access.

SPECIAL INSPECTOR. A qualified person employed or retained by an approved agency who shall prove to the satisfaction of the registered design professional in responsible charge and the Building Official as having the competence necessary to inspect a particular type of construction requiring special inspection.

Section 202 is amended by adding new definitions for the phrases "Assisted Living Facilities," and "Repair Garage" to read as follows:

ASSISTED LIVING FACILITIES. A building or part thereof housing persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff.

REPAIR GARAGE. A building, structure or portion thereof used for servicing or repairing motor vehicles. This occupancy shall also include garages involved in minor repair, modification and servicing of motor vehicles for items such as lube changes, inspections, windshield repair or replacement, shocks, minor part replacement and other such minor repairs

Section 303.1.3 is amended to read as follows:

303.1.3 Associated with Group E occupancies. A room or space used for assembly purposes that is associated with a Group E occupancy is not considered a separate occupancy except when applying the assembly requirements of Chapter 10 and 11.

Section 304.1 is amended to add the following to the list of occupancies:

Fire stations
Police stations with detention facilities for 5 or less

Section 307.1 is amended by adding the following language to the end of Exception 4. Cleaning Establishments:

See also IFC chapter 21, Dry Cleaning Plant provisions.

Section 403.1 is amended by amending Paragraph 3 under "Exceptions" to read as follows:

3. Open air portions of buildings with a Group A-5 occupancy in accordance with Section 303.1.

Section 403.3 is amended by deleting Paragraph 2 under "Exceptions."

Section 403.3.2 is amended by amending the first paragraph to read as follows*:*

403.3.2 Water supply to required fire pumps. In buildings that are more than 120 feet (36.5 m) in building height, required fire pumps shall be supplied by connections to no fewer than two water mains located in different streets. Separate supply piping shall be provided between each connection to the water main and the pumps. Each connection and the supply piping between the connection and the pumps shall be sized to supply the flow and pressure required for the pumps to operate.

Section 404.5 is amended by deleting the paragraph titled "Exception."

Section 406.3.5.1 is amended by adding the following sentence:

A separation is not required between a Group R-2 and U carport provided that the carport is entirely open on all sides and that the distance between the two is at least 10 feet (3048 mm).

Section 506.3.2.1 is amended to read as follows:

506.3.2.1 Open space limits. Such open space shall be either on the same lot or dedicated for public use and shall be accessed from a street or approved fire lane. In order to be considered as accessible, if not in direct contact with a street or fire lane, a minimum 10-foot wide pathway meeting fire department access from the street or approved fire lane shall be provided.

Section 712.1.9 is amended by changing Item 4 to read as follows

4. Is not open to a corridor in Group I and H occupancies.

<u>Section 903.2 is amended to read as follows:</u>

903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in Sections 903.2.1 through 903.2.12. In addition to other sections of the 2015 International Fire Code, an approved automatic fire sprinkler system shall be installed in the occupancies and locations, excluding detached Group U (private garages, carports and sheds), as follows:

1. All new buildings two (2) or more stories in height.

   Exception: One and two family dwellings.

2. All new buildings two thousand five hundred (2,500) square feet or greater AND additions two thousand five hundred (2,500) square feet or greater to existing buildings.

   Exception: Detached Group U occupancies and one and two family dwellings

3. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all Group R-3 Townhouse Occupancies.

4. Group A-1. An automatic sprinkler system shall be provided for Group A-1 Occupancies where one of the following conditions exists:

   a. The fire area exceeds 2500 square feet (465 m^2).

   b. The fire area has an occupant load of 300 or more.

   c. The fire area is located on a floor other than the level of exit discharge.

   d. The fire area contains a multi-theater complex.

5. Group A-2. An automatic sprinkler system shall be provided for Group A-2 Occupancies where one of the following conditions exists:

   a. The fire area exceeds 2500 square feet (465 m^2).

   b. The fire area has an occupant load of 100 or more.

   c. The fire area is located on a floor other than the level of exit discharge.

6. Group A-3. An automatic sprinkler system shall be provided for Group A-3 Occupancies where one of the following conditions exists:

   a. The fire area exceeds 2500 square feet (465 m^2).

b. The fire area has an occupant load of 300 or more.

c. The fire area is located on a floor other than the level of exit discharge.

Exception: Areas used exclusively as participant sports areas where the main floor area is located at the same level as the level of exit discharge of the main entrance and exit.

7. Group A-4. An automatic sprinkler system shall be provided for Group A-4 Occupancies where one of the following conditions exists:

   a. The fire area exceeds 2500 square feet (465 m^2).

   b. The fire area has an occupant load of 300 or more.

   c. The fire area is located on a floor other than the level of exit discharge.

8. All Group R-1 and R-2 occupancies.

9. All Group S-2 (open parking garages).

   Exception: Of noncombustible construction that has no other types of occupancies located above the garage and has a minimum of two complete sides unobstructed for fire department access by roadway or fire lane.

10. In all buildings and structures where Section 903.2 of the Fire Code requires sprinkler systems in buildings or structures of less than 2,500 square feet.

11. Throughout all self-service storage facilities.

    Exception: One-story self-service storage facilities that have no interior corridors, with a one-hour fire barrier separation wall installed between every storage compartment.

12. All stories and basements described in 903.2.11.1, 903.2.11.1.1, 903.2.11.1.2, and 903.2.11.1.3.

13. All rubbish and linen chutes as described in 903.2.11.2.

14. All other hazards as described in 903.2.11.4, and 903.2.11.5.

15. All other required suppression systems as described in 903.2.11.6.

16. High-piled combustible storage: For any building with a clear height exceeding 12 feet (4572 mm), see Chapter 32 to determine if those provisions apply.

17. New and existing spray booths and spraying rooms shall be protected by an approved automatic fire-extinguishing system.

18. During construction as described in 903.2.12 and 3314.

19. All existing buildings two thousand five hundred (2,500) square feet or greater that change the occupancy type from a less hazardous to a more hazardous occupancy, based on life and fire risk.

Firewalls or fire barriers shall not be used to subdivide a building or structure into separate buildings to avoid the requirement to install a fire extinguishing system or automatic sprinkler system as required by this Section 903.2.

Section 903.3.1.1.1 is amended to read as follows:

903.3.1.1.1 Exempt locations. When approved by the building official and fire code official, automatic sprinklers shall not be required in the following rooms or areas where such rooms or areas are protected with an approved automatic fire detection system in accordance with Section 907.2 that will respond to visible or invisible particles of combustion and/or rate of rise heat detectors. Sprinklers shall not be omitted from any room merely because it is damp, of fire-resistance rated construction or contains electrical equipment.

1. Any room where the application of water, or flame and water, constitutes a serious life or fire hazard as determined by the building official or fire code official.

2. Any room or space where sprinklers are considered undesirable because of the nature of the contents, when approved by the building official or fire code official.

3. Generator and transformer rooms, under the direct control of a public utility, separated from the remainder of the building by walls and floor/ceiling or roof/ceiling assemblies having a fire-resistance rating of not less than 2 hours.

4. Elevator machine rooms, machinery spaces, and hoistways, other than pits where such sprinklers would not necessitate shunt trip requirements under any circumstances.

Section 903.3.1.2 is amended by adding Section 903.3.1.2.3 to read as follows:

903.3.1.2.3 Attics, Open Breezeways, and Attached Garages. Sprinkler protection is required in attic spaces of such buildings two or more stories in height, open breezeways, and attached garages in accordance with NFPA 13 and or NFPA 13R requirements.

Section 903.3.1.3 is amended to read as follows:

903.3.1.3 NFPA 13D sprinkler systems. Automatic sprinkler systems installed in one- and two-family dwellings, Group R-3 and R-4 Condition 1 and townhouses shall be permitted to be installed throughout in accordance with NFPA 13D or in accordance with state law.

Section 903.3.1 is amended by adding Section 903.3.1.4 to read as follows:

903.3.1.4 Freeze protection. Freeze protection systems for automatic fire sprinkler systems shall be in accordance with the requirements of the applicable referenced NFPA standard and this section.

903.3.1.4.1 Attics. Only dry-pipe, preaction, or listed antifreeze automatic fire sprinkler systems shall be allowed to protect attic spaces.

> **Exception:** Wet-pipe fire sprinkler systems shall be allowed to protect non-ventilated attic spaces where:
> 1. The attic sprinklers are supplied by a separate floor control valve assembly to allow ease of draining the attic system without impairing sprinklers throughout the rest of the building, and
> 2. Adequate heat shall be provided for freeze protection as per the applicable referenced NFPA standard, and
> 3. The attic space is a part of the building's thermal, or heat, envelope, such that insulation is provided at the roof deck, rather than at the ceiling level.

903.3.1.4.2 Heat trace/insulation. Heat trace/insulation shall only be allowed where approved by the fire code official.

Section 903.3.5 is amended to read as follows:

903.3.5 Water supplies. Water supplies for automatic sprinkler systems shall comply with this section and the standards referenced in Section 903.3.1. The potable water supply shall be protected against backflow in accordance with the requirements of this section and the International Plumbing Code. Water supply as required for such systems shall be provided in conformance with the supply requirements of the respective standards; however, every fire protection system shall be designed with a 10 psi safety factor. Reference Section 507.4 for additional design requirements.

Section 903.4 is amended by adding the following paragraph after the *Exceptions*.

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

Section 903.4.2 is amended to read as follows:

903.4.2 Alarms. An approved audible device, located on the exterior of the building in an approved location, shall be connected to every automatic sprinkler system. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of

the smallest orifice size installed in the system. Where a fire alarm system is installed, actuation of the automatic sprinkler system shall actuate the building fire alarm system. The alarm device required on the exterior of the building shall be a weatherproof horn/strobe notification appliance with a minimum 75 candela strobe rating, installed as close as practicable to the fire department connection.

Section 903.4.3 is amended to read as follows:

903.4.3 Floor control valves. Approved supervised indicating control valves and shall be provided at the point of connection to the riser on each floor in all buildings.

Section 905.2 is amended to read as follows:

905.2 Installation standards. Standpipe systems shall be installed in accordance with this section and NFPA 14. Manual Dry Standpipes shall be supervised with a minimum of 10 psig and a maximum 40-psig-air pressure with a high/low alarm.

Section 905.3 is amended by adding Section 905.3.9 to read as follows:

905.3.9 Buildings Exceeding 10,000 sq. ft. In buildings exceeding 10,000 square feet in area per story and where any portion of the building's interior area is more than 150 feet (45720 mm) of travel, vertically and horizontally, from the nearest point of fire department vehicle access, Class I automatic wet or manual wet standpipes shall be provided.

Exceptions:

1. Automatic dry and semi-automatic dry, or manual dry standpipes are allowed as provided for in NFPA 14 when approved by Code Official.

2. R-2 occupancies of four stories or less in height having no interior corridors.

Section 905.4 is amended to read as follows:

905.4 Location of Class I standpipe hose connections.

Class I standpipe hose connections shall be provided in all of the following locations:

1. In every required exit stairway, a hose connection shall be provided for each story above and below grade plane. Hose connections shall be located at an intermediate landing between stories, unless otherwise approved by the fire code official.

2. On each side of the wall adjacent to the exit opening of a horizontal exit.

   Exception: Where floor areas adjacent to a horizontal exit are reachable from an interior exit stairway hose connection by a 30-foot (9144 mm) hose stream from a

nozzle attached to 100 feet (30480 mm) of hose, a hose connection shall not be required at the horizontal exit.

3. In every exit passageway, at the entrance from the exit passageway to other areas of a building.

   Exception: Where floor areas adjacent to an exit passageway are reachable from an exit stairway hose connection by a 30- foot (9144 mm) hose stream from a nozzle attached to 100 feet (30480 mm) of hose, a hose connection shall not be required at the entrance from the exit passageway to other areas of the building.

4. In covered mall buildings, adjacent to each exterior public entrance from an exit passageway or exit corridor to the mall. In open mall buildings, adjacent to each public entrance to the mall at the perimeter line and adjacent to each entrance from an exit passageway or exit corridor to the mall.

5. Where the roof has a slope less than four unit's vertical in 12 unit's horizontal (33.3-percent slope), each standpipe shall be provided with a two-way ~~a~~ hose connection located to serve the roof or at the highest landing of an exit stairway with stair access to the roof provided in accordance with Section 1011.12.

6. Where the most remote portion of a nonsprinklered floor or story is more than 150 feet (45720 mm) from a hose connection or the most remote portion of a sprinklered floor or story is more than 200 feet (60960 mm) from a hose connection, the fire code official is authorized to require that additional hose connections be provided in approved locations.

7. When required by this Chapter, standpipe connections shall be placed adjacent to all required exits to the structure and at two hundred feet (200') intervals along major corridors thereafter, or as otherwise approved by the fire code official.

Section 905.9 is amended by adding the following paragraph after the *Exceptions*:

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

Paragraph 1 of Section 906.1 is amended to read in its entirety as follows, including the deletion of the *Exception*:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

<u>Section 907.1 is amended by adding Section 907.1.4 to read as follows</u>:

907.1.4 Design Standards. Where a new fire alarm system is installed, the devices shall be addressable. Fire alarm systems utilizing more than 20 smoke detectors shall have analog initiating devices.

<u>Section 907.2.1 is amended to read as follows</u>:

907.2.1 Group A. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group A occupancies having an occupant load of 300 or more persons or more than 100 persons above or below the lowest level of exit discharge. Group A occupancies not separated from one another in accordance with Section 707.3.10 of the International Building Code shall be considered as a single occupancy for the purposes of applying this section. Portions of Group E occupancies occupied for assembly purposes shall be provided with a fire alarm system as required for the Group E occupancy.

Activation of fire alarm notification appliances shall:

1. Cause illumination of the means of egress with light of not less than 1 foot-candle (11lux) at the walking surface level, and

2. Stop any conflicting or confusing sounds and visual distractions.

<u>Section 907.2.3 is amended to read in its entirety as follows:</u>

907.2.3 Group E. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E educational occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarms system. An approved smoke detection system shall be installed in Group E day care occupancies. Unless separated by a minimum of 100’ open space, all buildings, where portable buildings or the main building, will be considered one building for alarm occupant load consideration and interconnection of alarm systems.

Exceptions:

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less when provided with an approved automatic sprinkler system.

    1.1 Residential In-Home day care with not more than 12 children may use hard-wired or wireless interconnected single station detectors with battery backup in all habitable rooms. (For care of more than five children 2 ½ or less years of age, see Section 907.2.6).

2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an *approved* occupant notification signal in accordance with Section 907.5.

Section 907.2.4 is amended by deleting the paragraph titled "Exception."

Section 907.2.7 is amended by amending Exception 1 to read as follows and deleting Exception 2:

Exception:

1. A manual fire alarm system is not required in covered mall buildings complying with Section 402 of the International Building Code.

Section 907.2.8.1 is amended by deleting Exceptions 2, 2.1, 2.2, and 2.3.

Section 907.2.9.1 is amended by deleting Exceptions 2 and 3.

Section 907.2.11.2 is amended by adding the following sentence at the end of the section.

All smoke alarms shall be listed and installed in accordance with the provisions of this code and the household fire warning equipment provisions of NFPA 72.

Exception 3 in Section 907.2.13 is amended to read as follows:

3. Open air portions of buildings with an occupancy in Group A-5 in accordance with Section 303.1; however, this exception does not apply to accessory uses including but not limited to skyboxes, restaurants and similarly enclosed areas.

Section 907.2.13.1.1 is amended by amending numbered paragraph 1 and adding a new numbered paragraph 3 to read as follows:

1. In each mechanical equipment, electrical, transformer, telephone equipment or similar room, and Central Control Station.

* * *

3. For Group R, Division 1 Occupancies, in all interior corridors serving as a means of egress for an occupant load of 10 or more.

Section 907.4.2 is amended by adding Section 907.4.2 to read as follows:

907.4.2.7 Type. Manual alarm actuating devices shall be an approved double action type.

Section 907.6.1 is amended by adding Section 907.6.1.1 to read as follows:

907.6.1.1 Wiring Installation. All fire alarm systems shall be installed in such a manner that a failure of any single initiating device or single open in an initiating circuit conductor will not interfere with the normal operation of other such devices. All signaling line circuits (SLC) shall be installed in such a way that a single open will not interfere with the operation of any addressable devices (Class A). Outgoing and return SLC conductors shall be installed in accordance with NFPA 72 requirements for Class A circuits and shall have a minimum of four feet separation horizontal and one foot vertical between supply and return circuit conductors. The initiating device circuit (IDC) from an addressable input (monitor) module may be wired Class B, provided the distance from the addressable module to the initiating device is ten feet or less.

Section 907.6.3 is amended by deleting all "Exceptions."

Section 907.6.4.2 is amended to read as follows:

907.6.4.2 High-rise buildings. In high-rise buildings, a separate zone by floor or an addressable fire alarm system shall be provided, based on the current fire alarm system installation for each of the following types of alarm-initiating devices where provided:

1. Smoke detectors

2. Sprinkler waterflow devices.

3. Manual fire alarm boxes.

4. Other approved types of automatic fire detection devices or suppression systems.

5. In Group B office buildings, corridor walls and ceilings need not be of fire resistive construction within office spaces of a single tenant when the space is equipped with an automatic smoke-detection system within the corridor. The actuation of any detector shall activate alarms audible in all areas served by the corridor. The smoke-detection system shall be connected to the building's fire alarm system where such a system is provided.

Section 907.6.6 is amended by adding a sentence at the end of paragraph to read as follows*:*

See 907.6.3 for the required information transmitted to the supervising station.

Section 907.6.6 is amended by adding Section 907.6.6.3 to read as follows:

907.6.6.3 Communication requirements. All alarm systems, new or replacement, shall transmit alarm, supervisory and trouble signals descriptively to the approved central station, remote supervisory station or proprietary supervising station as defined in NFPA 72, with the correct device designation and location of addressable device identification. Alarms shall not be permitted to be transmitted as a general alarm or zone condition.

<u>Section 909.2 is amended by adding Section 909.2.1 to read as follows</u>:

909.2.1 Smoke-control System for High-Rises. A smoke control system meeting the requirements of Section 909 in the International Fire Code-2015 Edition and this code shall be provided for high-rise buildings.

<u>Section 909 is amended by adding Section 909.22 and related subsections to read as follows</u>:

909.22 Stairway or Ramp Pressurization Alternative. Where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 and the stair pressurization alternative is chosen for compliance with Building Code requirements for a smoke proof enclosure, interior exit stairways or ramps shall be pressurized to a minimum of 0.10 inches of water (25 Pa) and a maximum of 0.35 inches of water (87 Pa) in the shaft relative to the building measured with all interior exit stairway and ramp doors closed under maximum anticipated conditions of stack effect and wind effect. Such systems shall comply with Section 909, including the installation of a separate fire-fighter's smoke control panel as per Section 909.16, and a Smoke Control Permit shall be required from the fire department as per Section 105.7.

909.22.1 Ventilating equipment. The activation of ventilating equipment for the stair or ramp pressurization system shall be by smoke detectors installed at each floor level at an approved location at the entrance to the smoke proof enclosure. When the closing device for the stairway or ramp shaft and vestibule doors is activated by smoke detection or power failure, the mechanical equipment shall activate and operate at the required performance levels. Smoke detectors shall be installed in accordance with Section 907.3.

909.22.1.1 Ventilation Systems. Smoke proof enclosure ventilation systems shall be independent of other building ventilation systems. The equipment, control wiring, power wiring and ductwork shall comply with one of the following:

1. Equipment, control wiring, power wiring and ductwork shall be located exterior to the building and directly connected to the smoke proof enclosure or connected to the smoke proof enclosure by ductwork enclosed by not less than 2-hour fire barriers constructed in accordance with Section 707 of the Building Code or horizontal assemblies constructed in accordance with Section 711 of the Building Code, or both.

2. Equipment, control wiring, power wiring and ductwork shall be located within the smoke proof enclosure with intake or exhaust directly from and to the outside or through ductwork enclosed by not less than 2-hour barriers constructed in accordance with Section 707 of the Building Code or horizontal assemblies constructed in accordance with Section 711 of the Building Code, or both.

3. Equipment, control wiring, power wiring and ductwork shall be located within the building if separated from the remainder of the building,

including other mechanical equipment, by not less than 2-hour fire barriers constructed in accordance with Section 707 of the Building Code or horizontal assemblies constructed in accordance with Section 711 of the Building Code, or both.

Exceptions:

1. Control wiring and power wiring utilizing a 2-hour rated cable or cable system.

2. Where encased with not less than 2 inches (51 mm) of concrete.

3. Control wiring and power wiring protected by a listed electrical circuit protective systems with a fire-resistance rating of not less than 2 hours.

909.22.1.2 Standby Power. Mechanical vestibule and stairway and ramp shaft ventilation systems and automatic fire detection systems shall be provided with standby power in accordance with Section 2702 of the Building Code.

909.22.1.3 Acceptance and Testing. Before the mechanical equipment is approved, the system shall be tested in the presence of the fire code official to confirm that the system is operating in compliance with these requirements.

<u>Section 910.2 is amended by amending Exceptions 2 and 3 to read as follows</u>:

2. Where areas of buildings are equipped with early suppression fast-response (ESFR) sprinklers, only manual smoke and heat vents or manually activated engineered mechanical smoke exhaust systems shall be required within these areas. Automatic smoke and heat vents are prohibited.

3. Only manual smoke and heat removal shall be required in areas of buildings equipped with control mode special application sprinklers with a response time index of $50(m*s)^{1/2}$ or less that are listed to control a fire in stored commodities with 12 or fewer sprinklers. Automatic smoke and heat removal is prohibited.

<u>Section 910.2 is amended by adding Section 910.2.3 to read as follows</u>:

910.2.3 Group H. Buildings and portions thereof used as a Group H occupancy as Section follows:

1. In occupancies classified as Group H-2 or H-3, any of which are more than 5,000 square feet in single floor area.

   Exception: Buildings of noncombustible construction containing only noncombustible materials.

2. In areas of buildings in Group H used for storing Class 2, 3, and 4 liquid and solid oxidizers, Class 1 and unclassified detonable organic peroxides, Class 3 and 4 unstable (reactive) materials, or Class 2 or 3 water-reactive materials as required for a high-hazard commodity classification.

   Exception: Buildings of noncombustible construction containing only noncombustible materials.

Section 910.3 is amended by adding Section 910.3.4 and related subsections to read as follows:

910.3.4 Vent Operation. Smoke and heat vents shall be capable of being operated by approved automatic and manual means. Automatic operation of smoke and heat vents shall conform to the provisions of Sections 910.3.2.1 through 910.3.2.3.

910.3.4.1 Sprinklered buildings. Where installed in buildings equipped with an approved automatic sprinkler system, smoke and heat vents shall be designed to operate automatically. The automatic operating mechanism of the smoke and heat vents shall operate at a temperature rating at least 100 degrees F (approximately 38 degrees Celsius) greater than the temperature rating of the sprinklers installed.

Exception: Manual only systems per Section 910.2.

910.3.4.2 Nonsprinklered Buildings. Where installed in buildings not equipped with an approved automatic sprinkler system, smoke and heat vents shall operate automatically by actuation of a heat-responsive device rated at between 100°F (56°C) and 220°F (122°C) above ambient.

Exception: Listed gravity-operated drop out vents.

910.3.4.3 Gravity-operated drop out vents. Automatic smoke and heat vents containing heat sensitive glazing designed to shrink and drop out of the vent opening when exposed to fire shall fully open within 5 minutes after the vent cavity is exposed to a simulated fire represented by a time-temperature gradient that reaches an air temperature of 500 degrees F (260 degrees C) within 5 minutes

Section 910.4.4 is amended to read as follows:

910.4.4 Activation. The mechanical smoke removal system shall be activated automatically by the automatic sprinkler system or by an approved fire detection system. Individual manual controls shall also be provided.

Exception: Manual only systems per Section 910.2.

Section 912.2 is amended by adding Section 912.2.3 to read as follows*:*

912.2.3 Hydrant Distance. An approved fire hydrant shall be located within 100 feet of the fire department connection as the fire hose lays along an unobstructed path.

Section 913.2.1 is amended by adding the following second paragraph and exception to read as follows:

When located on the ground level at an exterior wall, the fire pump room shall be provided with an exterior fire department access door that is not less than 3 ft. in width and 6 ft. – 8 in. in height, regardless of any interior doors that are provided. A key box shall be provided at this door, as required by Section 506.1.

> **Exception:** When it is necessary to locate the fire pump room on other levels or not at an exterior wall, the corridor leading to the fire pump room access from the exterior of the building shall be provided with equivalent fire resistance as that required for the pump room, or as approved by the *fire code official*. Access keys shall be provided in the key box as required by Section 506.1.

Chapter 10 is amended by replacing all references to "fire code official" with "building official."

Section 1006.2.2 is amended by adding Section 1006.2.2.6 to read as follows:

1006.2.2.6 Electrical Rooms. For electrical rooms, special exiting requirements may apply. Reference the Electrical Code as adopted.

Section 1009.1 is amended by adding Exception 4 to read as follows:

4. Buildings regulated under State Law and built in accordance with State registered plans, including any variances or waivers granted by the State, shall be deemed to be in compliance with the requirements of Section 1009.

Section 1010.1.9.4 is amended by amending Exceptions 3, 4, and 5 to read as follows:

3. Where a pair of doors serves an occupant load of less than 50 persons in a Group B, F, M, or S occupancy, manually operated edge-or surface-mounted bolts are permitted on the inactive leaf. The inactive leaf shall contain no doorknobs, panic bars or similar operating hardware.

4. Where a pair of doors serves a Group A, B, F, M or S occupancy, manually operated edge- or surface-mounted bolts are permitted on the inactive leaf provided such inactive leaf is not needed to meet egress width requirements and the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1. The inactive leaf shall contain no doorknobs, panic bars or similar operating hardware.

5. Where a pair of doors serves patient care rooms in Group I-2 occupancies, self-latching edge- or surface-mounted bolts are permitted on the inactive leaf provided that the inactive leaf is not needed to meet egress width requirements and the inactive leaf contains no doorknobs, panic bars or similar operating hardware.

Section 1010.1.9.8 is amended by adding paragraphs 7 and 8 to read as follows:

7. The building must be protected throughout by a monitored automatic fire sprinkler system with an approved smoke detector located on the egress side within 15 feet of the door OR for non-sprinklered buildings; an approved automatic smoke detection system is required in the path of egress.

8. The doors shall be capable of being deactivated by a signal from a switch located in a location approved approve by the Fire Department.

Section 1010.1.9.9 is amended by adding paragraphs 7, 8, and 9 to read as follows:

7 Activation of the building *automatic sprinkler system* or fire detection system shall automatically unlock the doors. The doors shall remain unlocked until the fire alarm system has been reset.

8. The building must be protected throughout by a monitored automatic fire sprinkler system with an approved smoke detector located on the egress side within 15 feet of the door OR for non-sprinklered buildings; an approved automatic smoke detection system is required in the path of egress.

9. The doors shall be capable of being deactivated by a signal from a switch located in a location approved approve by the Fire Department.

Section 1015.8 is amended by amending paragraph 1 to read as follows:

1. Operable windows where the top of the sill of the opening is located more than 55-ft (16 764 mm) above the finished grade or other surface below and that are provided with window fall prevention devices that comply with ASTM F 2006.

Section 1020.1 is amended by adding Exception 6 to read as follows:

6. In Group B office buildings, corridor walls and ceilings need not be of fire-resistive construction within a single tenant space when the space is equipped with approved automatic smoke-detection within the corridor. The actuation of any detector shall activate self-annunciating alarms audible in all areas within the corridor. Smoke detectors shall be connected to an approved automatic fire alarm system where such system is provided.

Section 1020.6 is amended to read as follows:

1020.6 Corridor continuity. All corridors shall be continuous from the point of entry to an exit, and shall not be interrupted by intervening rooms. {*remainder of section remains unchanged*}

Section 1029.1.1.1 is deleted.

Section 1031.2 is amended to read as follows:

1031.2 Reliability. Required exit accesses, exits and exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency. An exit or exit passageway shall not be used for any purpose that interferes with a means of egress.

Section 1101.1 is amended by adding an "Exception" to read as follows:

Exception: Components of projects regulated by and registered with Architectural Barriers Division of Texas Department of Licensing and Regulation shall be deemed to be incompliance with the requirements of this chapter.

Section 1203.1 is amend to read as follows:

1203.1 General. Buildings shall be provided with natural ventilation in accordance with Section 1203.4, or mechanical ventilation in accordance with the *International Mechanical Code*. Where air infiltration rate in a *dwelling unit* is 5 air changes or less per hour when tested with a blower door at a pressure 0.2 inch w.c. (50 Pa) in accordance with Section 402.4.1.2 of the *International Energy Conservation Code*, the *dwelling unit* shall be ventilated by mechanical means in accordance with Section 403 of the *International Mechanical Code*.

Section 1403.1 is amended to read as follows:

1403.1 General. The provisions of this section shall apply to exterior walls, wall coverings and components thereof.

> **1403.1.1 Additions.** On existing structures, the exterior material on remodels, additions or accessory buildings shall be consistent and architecturally compatible with the exterior finishes on the existing structure. Plans and specifications submitted for permits shall reflect both existing and proposed exterior finish material.
>
> > **1403.1.1.1 Completion of Exterior Finish.** Exterior finish construction shall be completed within 180 days of the commencement of the exterior work. Completion shall include all weather protection, cleanup and finish grading.

Section 1404.1 is amended by adding Section 1404.1.1 to read as follows:

1404.1.1 Non R-3 buildings. Each exterior wall of a non R-3 building shall be constructed with a cladding consisting of a minimum of 75% masonry material. For this section masonry shall be defined as construction composed of natural stone, kiln fired clay brick, concrete, hollow clay tile,

decorative concrete block, or other similar building units, cast in place concrete, concrete tilt wall (cast on site or precast) or other material approved by the building official. Stucco, EFIS, cementious fiber planks or panels, or similar type applications shall not be considered as meeting this requirement.

> **Exception:** Temporary buildings used for construction offices, sales offices leasing offices or other moved on to a project. Duration of the permit shall be determined by the building official or by the City Council as part of site plan approval.

Table 1505.1 is amended by amending footnote "b" to read as follows and deleting footnote "c":

b. Non-classified roof coverings shall be permitted on buildings of U occupancies having not more than 120 sq .ft. of projected roof area. When exceeding 120 sq. ft of projected roof area, buildings of U occupancies may use non-rated non-combustible roof coverings.

Section 1505.7 is deleted.

Section 1510.1 is amended by amending the first paragraph read as follows:

1510.1 General. Materials and methods of applications used for recovering or replacing an existing roof covering shall comply with the requirements of Chapter 15. All individual replacement shingles or shakes shall be in compliance with the rating required by Table 1505.1.

{ "Exception" remains unchanged}

Section 1704.2 is amended to read as follows*:*

1704.2 Special inspections and tests. Where application is made to the Building Official for construction as specified in Section 105, the owner or the owner's authorized agent, or the registered design professional in responsible charge, other than the contractor, shall employ one or more approved agencies to provide special inspections and tests during construction on the types of work listed under Section 1705 and identify the approved agencies to the Building Official. The special inspector shall not be employed by the contractor. These special inspections and tests are in addition to the inspections identified by the Building Official that are identified in Section 110.

Section 1704.2.1, is amended to read as follows:

1704.2.1 Special inspector qualifications. Prior to the start of construction and or upon request, the approved agencies shall provide written documentation to the registered design professional in responsible charge and the building official demonstrating the competence and relevant experience or training of the special inspectors who will perform the special inspections and tests during construction. [Remainder unchanged]

Section 1704.2.4 is amended to read as follows:

1704.2.4 Report requirement. Approved agencies shall keep records of special inspections and tests. The approved agency shall submit reports of special inspections and tests to the Building Official upon request, and to the registered design professional in responsible charge. Individual inspection reports shall indicate that work inspected or tested was or was not completed in conformance to approved construction documents. [Remainder unchanged]

Section 2901.1 is amended to read as follows:

2901.1 Scope. The provisions of this chapter and the… *{intervening text unchanged}* …conform to the *International Private Sewage Disposal Code.* The provisions of this Chapter are meant to work in coordination with the provisions of Chapter 4 of the International Plumbing Code. Should any conflicts arise between the two chapters, the Building Official shall determine which provision applies.

Section 2902.1 is amended by adding the following sentence:

In other than E Occupancies, the minimum number of fixtures in Table 2902.1 may be lowered, if requested in writing, by the applicant stating reasons for a reduced number and approved by the Building Official.

Table 2902.1; is amended by adding footnote f to read as follows:

f. Drinking fountains are not required in M Occupancies with an occupant load of 100 or less, B Occupancies with an occupant load of 25 or less, and for dining and/or drinking establishments.

Section 2902.1 is amended by adding a new Section 2902.1.3 to read as follows:

2902.1.3 Additional fixtures for food preparation facilities. In addition to the fixtures required in this Chapter, all food service facilities shall be provided with additional fixtures set out in this section.

> **2902.1.3.1 Hand washing lavatory.** At least one hand washing lavatory shall be provided for use by employees that is accessible from food preparation, food dispensing and ware washing areas. Additional hand washing lavatories may be required based on convenience of use by employees.

2902.1.3.2 Service sink. In new or remodeled food service establishments, at least one service sink or one floor sink shall be provided so that it is conveniently located for the cleaning of mops or similar wet floor cleaning tool and for the disposal of mop water and similar liquid waste. The location of the service sink(s) and/or mop sink(s) shall be approved by the City's health department.

Section 3001 is amended by adding Section 3001.5 to read as follows:

3001.5 Group R occupancies. At least one elevator shall be provided in Group R occupancies three (3) stories or more stories in height.

Exception: Group R-3 and R-4 occupancies.

Section 3002.1 is amended by adding "Exceptions" to read as follows:

Exceptions:

1. Elevators wholly located within atriums complying with Section 404 shall not require hoistway enclosure protection.

2. Elevators in open or enclosed parking garages that serve only the parking garage, and complying with Sections 406.5 and 406.6, respectively, shall not require hoistway enclosure protection.

Section 3005.4 is amended to read in its entirety as follows:

3005.4. Machine Rooms, control rooms, machinery spaces and control spaces. Elevator machine rooms, control rooms, control spaces and machinery spaces shall be enclosed with fire barriers constructed in accordance with Section 707 or horizontal assemblies constructed in accordance with Section 711, or both.

Section 3005 is amended by adding a new Section 3005.7 to read as follows.

3005.7 Fire Protection in Machine rooms, control rooms, machinery spaces and control spaces.

3005.7.1 Automatic sprinkler system. The building shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, except as otherwise permitted by Section 903.3.1.1.1 and as prohibited by Section 3005.7.2.1.

3005.7.2.1 Prohibited locations. Automatic sprinklers shall not be installed in machine rooms, elevator machinery spaces, control rooms, control spaces and elevator hoist-ways.

3005.7.2.2 Sprinkler system monitoring. The sprinkler system shall have a sprinkler control valve supervisory switch and water-flow initiating device provided for each floor that is monitored by the building's fire alarm system.

3005.7.3 Water protection. An approved method to prevent water from infiltrating into the hoistway enclosure from the operation of the automatic sprinkler system outside the elevator lobby shall be provided.

3005.7.4 Shunt trip. Means for elevator shutdown in accordance with Section 3005.5 shall not be installed.

Section 3005 is amended by adding a new Section 3005.8 to read as follows:

3005.8 Storage. Storage shall not be allowed within the elevator machine room, control room, machinery spaces and or control spaces. Provide approved signage at each entry to the above listed locations stating: "No Storage Allowed.

Section 3006.2 is amended by amending paragraph 5 to read as follows:

5. The building is a high rise and the elevator hoistway is more than 55 feet (16 764 mm) in height. The height of the hoistway shall be measured from the lowest floor at or above grade to the highest floors served by the hoistway.

Section 3102.1 is amended to read as follows:

3102.1 General. The provisions of Sections 3102.1 through 3102.8.3 shall apply to air-supported, air-inflated, membrane-covered cable and membrane-covered frame structures, collective known as membrane structures, erected for a period of 60 days in a calendar year or longer. Those erected for a shorter period of time shall comply with the International Fire Code. Membrane structures covering water storage facilities, water clarifiers, water treatment plants, sewage treatment plants and similar facilities not used for human occupancy are required to meet only the requirements of Sections 3102.3.1 and 3102.7. Membrane structures erected on a building, balcony, deck or other structure; or erected to protect automobiles, merchandise, goods, or other items for any period of time shall comply with this section.

Section 3102.1.1 is amended to read as follows:

3102.1.1 Membrane structures shall not be permitted as main or accessory structures.

EXCEPTION: The building official may permit a membrane structure, which is used in conjunction with a public park or covering playground equipment for an institutional use such as a church, school or similar use.

Section 3109.1 is amended to read as follows:

3109.1 General. Swimming pools shall comply with the requirements of sections 3109.2 through 3109.5 and other applicable sections of this code and other applicable state laws.

SECTION 2. All provisions of the Ordinances of the City of Farmers Branch, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. Any person violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmers Branch as heretofore amended and, upon conviction, shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000.00).

SECTION 6. This ordinance shall take effect on the first day of the calendar month following its passage in accordance with the provisions of the charter and state law.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE 13th DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:11/29/16:81276)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3406

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Ordinance

Agenda Number: G.5

Consider adopting Ordinance No. 3406 adopting the 2015 International Residential Code as amended; and take appropriate action.

BACKGROUND:
Since March of 2014 the City has been using the 2012 International Residential Code. Model construction codes such as the IRC are updated and re-published on a three year cycle. Staff is recommending updating to the most current edition, the 2015 International Residential Code. Some notable changes to the 2015 IRC include carbon monoxide alarms being required to be connected to the home wiring and have a battery back-up similar to smoke detectors. Additionally, all of the lumber capacity span charts covering floor joists, ceiling joist and rafters have been revised. The State of Texas has not only recognized the 2015 IRC, but has made it required statewide. Currently, all of our neighboring municipalities have adopted and are enforcing the 2015 IBC with the exception of the City of Coppell and the Town of Addison.

RECOMMENDATION:
City Administration recommends approval of Ordinance No. 3406, as presented.

POSSIBLE COUNCIL ACTION:
1. I move to approve Ordinance No. 3406, as presented.
2. I move to approve Ordinance No. 3406, with the following modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Ordinance No. 3406

ORDINANCE NO. 3406

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 22 "BUILDINGS AND BUILDING REGULATIONS" BY AMENDING ARTICLE III.5 "RESIDENTIAL CODE" TO ADOPT THE PROVISIONS OF THE 2015 EDITION OF THE INTERNATIONAL RESIDENTIAL CODE WITH AMENDMENTS AND APPENDICES P "SIZING OF WATER PIPING SYSTEM" AND Q "SWIMMING POOLS, SPAS AND HOT TUBS"; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS ($2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known generally as the "International Codes"); and

WHEREAS, the City of Farmers Branch has been involved throughout the development process of the International Codes through participation with the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG); and

WHEREAS, the creation of the 2015 editions of the International Codes by the ICC was in conjunction with the International Conference of Building Officials (ICBO), the organization whose codes the City of Farmers Branch has adopted since the 1970s; and

WHEREAS, the International Codes have been reviewed by the NCTCOG and City staff; and

WHEREAS, the City's building and construction codes are intended to be updated periodically, with the 2015 editions of the International Codes being the most current published building and construction codes for which local amendments have been developed; and

WHEREAS, the City Council of the City of Farmers Branch has determined that it is in the best interest of the citizens of the City of Farmers Branch to adopt the 2015 editions of the International Codes, as stated herein, as the minimum standards for the construction, use, occupancy and maintenance of buildings and structures within the City limits, as set forth herein, and to adopt local amendments to said codes in order to account for unique local practices and/or conditions relating to the design and construction of structures within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Chapter 22 "Buildings and Building Regulations" of the Code of Ordinances of the City of Farmers Branch, Texas, is amended by amending Article III.5 "Residential Code" to read as follows:

ARTICLE III.5. RESIDENTIAL CODE

Sec. 22-100. Adoption of International Residential Conservation Code; purpose.

The 2015 Edition of the International Residential Code (inclusive of Appendix P "Sizing of Water Piping System" and Appendix Q "Swimming Pools, Spas and Hot Tubs"), as published by the International Code Council and as amended pursuant to Sec. 22-101, is hereby adopted. Copies of the Residential Code are on file in the office of the city secretary for permanent record and inspection and are incorporated into this section as if fully set forth herein. The chief building official, or his authorized representative, is hereby authorized and directed to enforce all provisions of the Residential Code. For purposes of this Article, the phrase "Residential Code" means collectively (i) the 2015 Edition of the International Residential Code (inclusive of Appendix P "Sizing of Water Piping System" and Appendix Q "Swimming Pools, Spas and Hot Tubs" or set forth herein) and (ii) the local amendments adopted pursuant to Sec. 22-101.

Sec. 22-101. Amendments to International Residential Code.

For purposes of enforcement of the provisions of the Residential Code within the incorporated limits of the City, the following sections, paragraphs, and sentences of the *2015 Edition of the International Residential Code* are hereby amended as follows:

Section R102.4 is amended to read as follows:

R102.4 Referenced codes and standards. The *codes*, when specifically adopted, and standards referenced in this *code* shall be considered part of the requirements of this *code* to the prescribed extent of each such reference and as further regulated in Sections R102.4.1 and R102.4.2. Whenever amendments have been adopted to the referenced *codes* and standards, each reference to said *code* and standard shall be considered to reference the amendments as well. Any reference made to NFPA 70 or the *Electrical Code* shall mean the *Electrical Code* as adopted.

Section R105.1.1 is amended to read as follows:

R105.1.1 Foundation repair. Any owner, authorized agent, company or person who intends to repair a foundation shall first obtain the required permit.

Section R105.2 is amended to read as follows:

R105.2 Work exempt from permit. Permits shall not be required for the following. Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

1. Sidewalks and driveways not more than 12 inches above adjacent grade and not over 100 square feet in area.

2. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.

3. Prefabricated swimming pools that are less than 24 inches (610 mm) deep.

4. Swings and other playground equipment accessory to a one-or two-family dwelling.

5. Fences less than 20 feet in length.

Section R105.3.2 is amended to read as follows:

R105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned 90 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Section R105.5 is amended to read as follows:

R105.5 Expiration. Every permit issued shall become invalid unless the work authorized by such permit is commenced within 90 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 90 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

All permits for the construction of residential buildings shall expire 365 days after the date of issuance. Prior to expiration of the permit for work on residential property, the permittee shall complete all of the work authorized by said permit; or restore the structure and property to its original condition; or the building official may authorize partial completion of the permitted work that will meet with the intent of this section and minimize the negative impact to adjoining properties. The building official may grant, in writing one or more extensions of time for periods not more than 30 days each. The extension shall be requested in writing and justifiable cause demonstrated.

R105.5.1 Fences and accessory buildings. Every permit issued by the building official under the provisions of this code for the construction of fences and/or accessory buildings, including underground structures, shall expire and become null and void 90 days after the date of issuance.

Changes, alterations or adjustments in the permit after it has been issued shall not extend the original date established upon issuance for the permit. Work shall not continue on fences and/or accessory buildings for which the building permit has expired and has become null and void. A new permit may be requested from the building official by filing an application as required by this code. Prior to issuing a new permit an investigation fee equal to the amount of the permit fee as established in the Fee Schedule of the City of Farmers Branch and shall be in addition to the building permit fee.

Every subsequent building permit issued after the original building permit has expired shall expire and become null and void after the number of days of issuance as follows:

2nd permit	45 days
3rd and all following permits	30 days

The building official may place any additional conditions as necessary upon the permit and authorized construction work to protect and help minimize the negative impact of long term construction activity on adjacent properties and on the City infrastructure.

Portions of fences and/or accessory buildings in residential areas not completed and for which a permit has expired shall be removed and the area immediately restored to its original condition. The site and structure must also be secured and material and trash removed.

R105.5.2 Completion of exterior. All work relating to the exterior of a structure shall be completed within 180 days of the date the permit was issued. This includes, but is not limited to, all exterior facade material, painting, windows, final grading and landscaping. The building official may grant, in writing one or more extensions of time for periods not more than 30 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Section R106.1.1.1 is amended to read as follows:

R106.1.1.1 Foundation repair. Construction documents submitted for a foundation repair shall be prepared by a professional engineer licensed by the State of Texas who shall affix the appropriate seal on the drawings.

1. Inspection of a permitted foundation repair shall be made by the designing professional engineer and the designing professional engineer shall supply the City with a report that states that the inspections were performed and that the installation is in full compliance with the construction documents.

2. Upon completion of the foundation repair, a test on the plumbing system shall be performed. The water supply system shall be tested in accordance with Section P2503.6, and the DWV system shall be tested in accordance with Section P2503.5.1 with the provision that the water test need not exceed height of the finished floor elevation of the first floor.

3. A final inspection of a permitted foundation repair shall be performed to insure all required documentation was submitted, all inspections were performed, and that the disturbed areas were repaired.

Section R110.2 is amended to read as follows:

R110.2 Change in ownership, tenancy or use. Upon change of ownership or tenancy in a building or structure used as a dwelling unit, the owner shall request a Certificate of Occupancy from the building official. Prior to allowing occupancy of the building the building official shall inspect the building for compliance with the requirements of this code, the Property Maintenance Code, the Minimum Housing Code, and the Comprehensive Zoning Ordinance. If deficiencies are found the building official may prohibit occupancy of the structure and shall direct the owner to take such action as is necessary to bring the premises into compliance with the above codes and ordinances. Changes in the character or use of an existing structure shall not be made except as specified in sections 3408 and 3409 of the 2015 *International Building Code.*

<u>Section R111.1 is amended to read as follows</u>:

R111.1 Connection of service utilities. No person shall make connections from a utility, source of energy, fuel or power to any building or system, until inspected for compliance with all applicable City codes and ordinances and approved by the building official. Failure of any utility company to comply with these provisions shall be a separate violation of the code.

<u>Section 112.5 is amended to read as follows</u>:

R112.5 Appointment. The members of the City of Farmers Branch Zoning Board of Adjustment shall act as the board of appeals and be known as the City of Farmers Branch Building Code Board of Appeals. The building official shall be an ex-officio member of the board and shall act as secretary to said board but shall have no vote on any matter before the board.

R202 TOWNHOUSE. A single-family dwelling unit constructed in a group of three or more attached units <u>separated by property lines</u> in which each unit extends from foundation to roof and with a *yard* or *public way* on at least two sides.

Table R301.2 (1); fill in as follows:

GROUND SNOW LOAD	WIND DESIGN				SEISMIC DESIGN CATEGORY[f]	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP[e]	ICE BARRIER UNDERL.	FLOOD HAZARDS[g]	AIR FREEZING	MEAN ANNUAL TEMP[i]
	SPEED[d] (MPH)	Topographic Effects[k]	Special Wind Region[L]	Windborne Debris Zone[m]		Weathering[a]	Frost Line Depth[b]	Termite[c]					
5 lb/ft	115 (3 sec-gust)/ 76 fastest mile	No	No	No	A	Moderate	6”	Very Heavy	22^0 F	No	Local Code	150	64.9^0 F

<u>Section R302.1 is amended by adding a new paragraph 6 under “Exceptions” to read as follows:</u>

6. Open non-combustible carport structures may be constructed when also approved within adopted ordinances.

<u>Section R302.3 is amended by amending a new paragraph 3. Under “Exception” to read as follows:</u>

3. Two-family dwelling units that are also divided by a property line through the structure shall be separated as required for townhouses.

<u>Section R302.5.1 is amended to read as follows:</u>

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall

be equipped with solid wood doors not less than 13/8 inches (35 mm) in thickness, solid or honeycomb core steel doors not less than 13/8 inches (35 mm) thick, or 20-minute fire-rated doors.

Section R303.3 is amended by amending only the last sentence of the paragraph titled "Exception" to read as follows:

Exception:.... Exhaust air from the space shall be exhaust out to the outdoors unless the space contains only a water closet, a lavatory, or water closet and a lavatory may be ventilated with an approved mechanical recirculating fan or similar device designed to remove odors from the air.

.

Section R313 Automatic Fire Sprinkler Systems, inclusive of all subsections, is deleted.

Section R314.2.2 is amended to read as follows:

R314.2.2 Alterations, repairs, additions and certificate of occupancy. When alterations, repairs, or additions requiring a permit occur; or when one or more sleeping rooms are added or created; or a Certificate of Occupancy is issued for an existing dwelling unit, the individual dwelling unit shall be equipped with smoke alarms located as required for new dwellings. {*remainder unchanged*}

Section R314.6.1 is amended to read as follows:

R314.6.1 Replacement of Smoke Alarms. Unless otherwise recommended by the manufacturer, single and multiple station smoke alarms shall be replaced when they fail to respond to operability tests. Smoke alarms shall not be allowed to stay in service longer than 10 years from the date of manufacture.

Section R315.2.2 Alterations, repairs and additions is amended by amending paragraph 2 under "Exceptions" to read as follows:

2. Installation, alteration or repairs of electrical powered...{remaining text unchanged}

Section R322 Flood Resistant Construction is deleted.

Section R326 Swimming Pools, Spas and Hot Tubs is amended to read as follows:

R326.1 General. The design and construction of pools and spas shall comply with the 2015 IRC Appendix Q. Swimming Pools, Spas and Hot Tubs.

Section R401.2, amended by adding the following sentence to the existing:

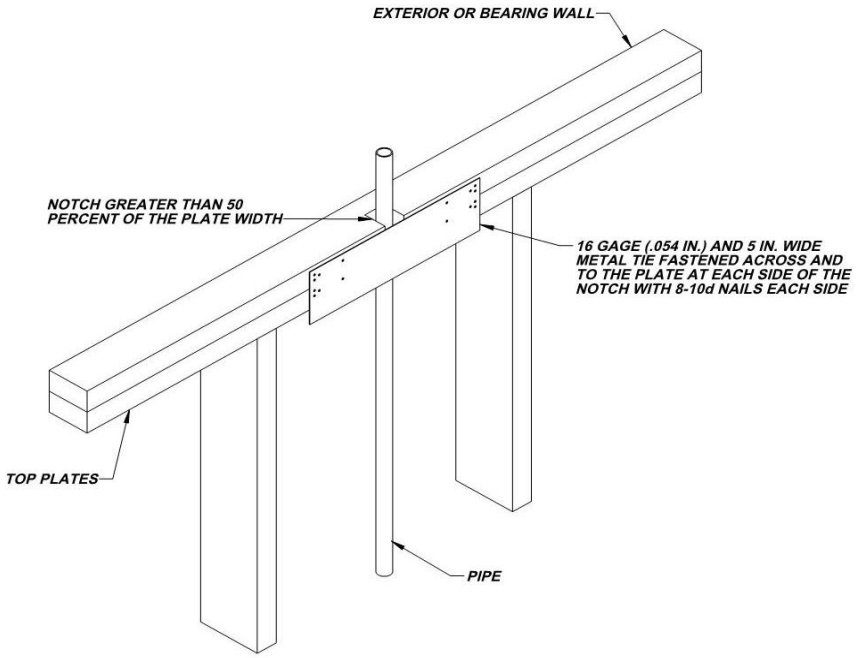
...Every foundation and/or footing, or any size addition to an existing post-tension foundation, regulated by this code shall be designed and sealed by a Texas-registered engineer.

Section 602.6.1 is amended to read as follows:

R602.6.1 Drilling and notching of top plate. When piping or ductwork is placed in or partly in an exterior wall or interior load-bearing wall, necessitating cutting, drilling or notching of the top plate by more than 50 percent of its width, a galvanized metal tie not less than 0.054 inch thick (1.37 mm) (16 Ga) and 5 inches (127 mm) wide shall be fastened across and to the plate at each

side of the opening with not less than eight 10d (0.148 inch diameter) having a minimum length of 1 ½ inches (38 mm) at each side or equivalent. Fasteners will be offset to prevent splitting of the top plate material. The metal tie must extend a minimum of 6 inches past the opening. See figure R602.6.1.

<u>Figure R602.6.1 is amended to appear and read as follows:</u>



<u>Section R703.1 is amended to read as follows</u>:

R703.1 General. Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section R703.4. Exterior walls shall have the minimum exterior finishes as follows:

1. On existing structures, the exterior material on repairs, remodels and additions and accessory structures over 200 square feet in area shall be consistent and architecturally compatible in scale, materials and character with the exterior finishes on the main building. Plans and specifications submitted shall reflect both existing and proposed exterior finish material.

2. On new structures, a minimum of 75% masonry shall be required on all elevations of the first floor. A minimum of 50% masonry shall be required on the total elevations above the first floor. For this section masonry shall be defined as construction composed of natural stone, kiln fired clay brick, decorative concrete block or other masonry material approved by the building official. Stucco and plaster shall only be considered as meeting the masonry requirement when applied using a 3 step process over diamond metal lath mesh to a 7/8 inch thickness or by other processes producing comparable cement stucco finish with equal or greater strength, durability and fire resistive specifications. All masonry materials except for stucco shall be a minimum of 3 inches in thickness.

3. Fabric or membrane coverings shall not be permitted on structures over 200 square feet in area.

Section R703.8.4.1 is amended by adding the following at the end of the paragraph:

In stud framed exterior wall**s**, all ties shall be anchored to studs as follows:

1. When studs are 16 in (407 mm) o.c., stud ties shall be spaced no further apart than 24 in (737 mm) vertically starting approximately 12 in (381 mm) from the foundation; or

2. When studs are 24 in (610 mm) o.c., stud ties shall be spaced no further apart than 16 in (483 mm) vertically starting approximately 8 in (254 mm) from the foundation.

Section R902.1 is amended by amending the first paragraph and adding a new paragraph 5 under "Exceptions" to read as follows:

R902.1 Roofing covering materials. Roofs shall be covered with materials as set forth in Sections R904 and R905. Class A, B, or C roofing shall be installed. Classes A, B, and C roofing required by this section to be listed shall be tested in accordance with UIL 790 or ASTM E 108.

Exceptions:

5. Non-classified roof coverings shall be permitted on one-story detached *accessory structures* used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed (area defined by jurisdiction).

Chapter 11 [RE] Energy Efficiency is amended in its entirety to read as follows:

N1101.1 Scope. This chapter regulates the energy efficiency for the design and construction of buildings regulated by this code.

N1101.2 Compliance. Compliance shall be demonstrated by meeting the requirements of the residential provisions of 2015 International Energy Conservation Code as amended by Section 24.02.302 of the Code of Ordinances.

Section M1305.1.3 is amended to read as follows:

M1305.1.3 Appliances in attics. *Attics* containing *appliances* requiring access shall be provided . . . *{intervening text unchanged}* . . . sides of the *appliance* where access is required. The clear access opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), or larger and large enough to allow removal of the largest *appliance*. A walkway to an appliance shall be rated as a floor as approved by the building official. As a minimum, access to the *attic* space, provide one of the following:

1. A permanent stair.

2. A pull down stair with a minimum 300 lb (136 kg) capacity.

3. An access door from an upper floor level.

Exceptions:

1. The passageway and level service space are not required where the *appliance* can be serviced and removed through the required opening.

2. Where the passageway is unobstructed…*{remaining text unchanged}*

<u>Section M1411.3 is amended to read as follows:</u>

M1411.3 Condensate disposal. Condensate from all cooling coils or evaporators shall be conveyed from the drain pan outlet to a sanitary sewer through a trap, by means of a direct or indirect drain. *{remaining text unchanged}*

<u>Section M1411.3.1 is amended by amending Items 3 and 4 to read as follows:</u>

3. An auxiliary drain pan… *{intervening text unchanged}*… with Item 1 of this section. A water level detection device may be installed only with prior approval of the *building official*.

4. A water level detection device… *{intervening text unchanged}*… overflow rim of such pan. A water level detection device may be installed only with prior approval of the *building official*.

<u>Section M1411.3.1.1 is amended to read as follows:</u>

M1411.3.1.1 Water-level monitoring devices. On down-flow units …*{intervening text unchanged}*… installed in the drain line. A water level detection device may be installed only with prior approval of the *building official.*

<u>Section M1503.4 Makeup Air Required is amend to read as follows</u>:

M1503.4 Makeup air required. Exhaust hood systems capable of exhausting in excess of 400 cubic feet per minute (0.19 m3/s) shall be provided with makeup air at a rate approximately equal to the difference between the exhaust air rate and 400 cubic feet per minute. Such makeup air systems shall be equipped with a means of closure and shall be automatically controlled to start and operate simultaneously with the exhaust system.

Exception: Where all appliances in the house are of sealed combustion, power-vent, unvented, or electric, the exhaust hood system shall be permitted to exhaust up to 600 cubic feet per minute (0.28 m3/s) without providing makeup air. Exhaust hood systems capable of exhausting in excess of 600 cubic feet per minute (0.28 m3/s) shall be provided with a makeup air at a rate approximately equal to the difference between the exhaust air rate and 600 cubic feet per minute.

<u>Section M2005.2 is amended to read as follows:</u>

M2005.2 Prohibited locations. Fuel-fired water heaters shall not be installed in a room used as a storage closet. Water heaters located in a bedroom or bathroom shall be installed in a sealed enclosure so that *combustion air* will not be taken from the living space. Access to such enclosure may be from the bedroom or bathroom when through a solid door, weather-stripped in accordance with the exterior door air leakage requirements of the *International Energy Conservation Code*

and equipped with an *approved* self-closing device. Installation of direct-vent water heaters within an enclosure is not required.

Section G2412.5 (401.5) is amended by adding the following to the end of the section:

Both ends of each section of medium pressure gas piping shall identify its operating gas pressure with an *approved* tag. The tags are to be composed of aluminum or stainless steel and the following wording shall be stamped into the tag:

"WARNING: 1/2 to 5 psi gas pressure - Do Not Remove"

Section G2415.2.2 (402.2.2) is amended by adding a paragraph titled "Exception" to read as follows:

Exception: Corrugated stainless steel tubing (CSST) shall be a minimum of 1/2" (18 EDH).

Section G2415.10 (404.10) is amended to read as follows:

G2415.12 (404.12) Minimum burial depth. Underground *piping systems* shall be installed a minimum depth of 18 inches (457 mm) below grade.

Section G2417.1 (406.1) is amended to read as follows:

G2417.1 (406.1) General. Prior to acceptance and initial operation, all *piping* installations shall be inspected and *pressure tested* to determine that the materials, design, fabrication, and installation practices comply with the requirements of this *code*. The *permit* holder shall make the applicable tests prescribed in Sections 2417.1.1 through 2417.1.5 to determine compliance with the provisions of this *code*. The *permit* holder shall give reasonable advance notice to the *building official* when the *piping system* is ready for testing. The *equipment*, material, power and labor necessary for the inspections and test shall be furnished by the *permit* holder and the *permit* holder shall be responsible for determining that the work will withstand the test pressure prescribed in the following tests.

Section G2417.4 is amended to read as follows:

G2417.4 (406.4) Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the *pressure test* period. The source of pressure shall be isolated before the *pressure tests* are made.

Section G2417.4.1 is amended to read as follows:

G2417.4.1 (406.4.1) Test pressure. The test pressure to be used shall be not less than 3 psig (20 kPa gauge), or at the discretion of the *Building Official*, the *piping* and *valves* may be tested at a pressure of at least six (6) inches (152 mm) of mercury, measured with a manometer or slope gauge. For tests requiring a pressure of 3 psig, diaphragm gauges shall utilize a dial with a minimum diameter of three and one half inches (3 ½"), a set hand, 1/10 pound incrementation and pressure range not to exceed 6 psi for tests requiring a pressure of 3 psig. For tests requiring a pressure of 10 psig, diaphragm gauges shall utilize a dial with a minimum diameter of three and one-half inches (3 ½"), a set hand, a minimum of 2/10 pound incrementation and a pressure range

not to exceed 20 psi. For welded piping, and for piping carrying gas at pressures in excess of fourteen (14) inches water column pressure (3.48 kPa) (1/2 psi) and less than 200 inches of water column pressure (52.2 kPa) (7.5 psi), the test pressure shall not be less than ten (10) pounds per square inch (69.6 kPa). For piping carrying gas at a pressure that exceeds 200 inches of water column (52.2 kPa) (7.5 psi), the test pressure shall be not less than one and one-half times the proposed maximum working pressure.

Section G2417.4.2 is amended to read as follows:

G2417.4.2 (406.4.2) Test duration. The test duration shall be held for a length of time satisfactory to the *Building Official*, but in no case for less than fifteen (15) minutes. For welded *piping*, and for *piping* carrying gas at pressures in excess of fourteen (14) inches water column pressure (3.48 kPa), the test duration shall be held for a length of time satisfactory to the *Building Official*, but in no case for less than thirty (30) minutes.

Section G2420.1 (406.1) is amended by adding a new Section G2420.1.4 to read as follows:

G2420.1.4 Valves in CSST installations. Shutoff *valves* installed with corrugated stainless steel (CSST) *piping systems* shall be supported with an approved termination fitting, or equivalent support, suitable for the size of the *valves*, of adequate strength and quality, and located at intervals so as to prevent or damp out excessive vibration but in no case greater than 12-inches from the center of the *valve*. Supports shall be installed so as not to interfere with the free expansion and contraction of the system's *piping*, fittings, and *valves* between anchors. All *valves* and supports shall be designed and installed so they will not be disengaged by movement of the supporting *piping*.

Section G2420.5.1 (409.5.1) is amended to read as follows:

G2420.5.1 (409.5.1) Located within the same room. The shutoff valve …*{intervening text unchanged}*… in accordance with the appliance manufacturer's instructions. A secondary shutoff valve must be installed within 3 feet (914 mm) of the firebox if appliance shutoff is located in the firebox.

Section G2421.1 (410.1) is amended to read as follows:

G2421.1 (410.1) Pressure regulators. A line *pressure regulator* shall be … *{intervening text unchanged}*… *approved* for outdoor installation. Access to *regulators* shall comply with the requirements for access to *appliances* as specified in Section M1305.

> **Exception:** A passageway or level service space is not required when the *regulator* is capable of being serviced and removed through the required *attic* opening.

Section G2422.1.2.3 (411.1.3.3) is amended by deleting paragraphs 1 and 4 under "Exceptions."

Section G2445.2 (621.2) is amended by adding a paragraph titled "Exception" to read as follows:

Exception: Existing *approved unvented room heaters* may continue to be used in *dwelling units*, in accordance with the *code* provisions in effect when installed, when *approved* by the *Building*

Official unless an unsafe condition is determined to exist as described in *International Fuel Gas Code* Section 108.7 of the Fuel Gas Code.

Section G2448.1.1 (624.1.1) is amended read as follows:

G2448.1.1 (624.1.1) Installation requirements. The requirements for *water heaters* relative to access, sizing, *relief valves*, drain pans and scald protection shall be in accordance with this *code.*

Section P2801.6.1 is amended to read as follows:

Section P2801.6.1 Pan size and drain. The pan shall be not less than 11/2 inches (38 mm) in depth and shall be of sufficient size and shape to receive all dripping or condensate from the tank or water heater. The pan shall be drained by an indirect waste pipe having a diameter of not less than 3/4 inch (19 mm). Piping for safety pan drains shall be of those materials listed in Table 605.4. Multiple pan drains may terminate to a single discharge piping system when *approved* by the administrative authority and permitted by the manufactures installation instructions and installed with those instructions.

Section P2801.7 is amended by adding an "Exception" to read as follows:

Exceptions: Electric Water Heater

Section P2804.6.1 is amended to read as follows

Section P2804.6.1 Requirements for discharge piping. The discharge piping serving a pressure relief valve, temperature relief valve or combination thereof shall:

1. Not be directly connected to the drainage system.

2. Discharge through an air gap.

3. Not be smaller than the diameter of the outlet of the valve served and shall discharge full size to the air gap.

4. Serve a single relief device and shall not connect to piping serving any other relief device or equipment.

   Exception: Multiple relief devices may be installed to a single T & P discharge piping system when approved by the administrative authority and permitted by the manufactures installation instructions and installed with those instructions.

5. Discharge, to an indirect waste receptor or to the outdoors.

   [remaining text is unchanged]

Section P2902.5.3 is amended to read as follows:

P2902.5.3 Lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, a double-check assembly or a reduced pressure principle backflow preventer. A valve

shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

Section P3009.9 is amended to read as follows:

P3003.9. Solvent cementing. Joint surfaces shall be clean and free from moisture. A purple primer that conforms to ASTM F 656 shall be applied. Solvent cement not purple in color and conforming to ASTM D 2564, CSA B137.3, CSA B181.2 or CSA B182.1 shall be applied to all joint surfaces. The joint shall be made while the cement is wet and shall be in accordance with ASTM D 2855. Solvent cement joints shall be permitted above or below ground.

Exception: A primer is not required where both of the following conditions apply.

Section P3111, including all subsections, is deleted in its entirety.

Section P3112.2 is amended in its entirety to read as follows:

P3112.2 Installation. Traps for island sinks and similar equipment shall be roughed in above the floor and may be vented by extending the vent as high as possible, but not less than the drain board height and then returning it downward and connecting it to the horizontal sink drain immediately downstream from the vertical fixture drain. The return vent shall be connected to the horizontal drain through a wye-branch fitting and shall, in addition, be provided with a foot vent taken off the vertical fixture vent by means of a wye-branch immediately below the floor and extending to the nearest partition and then through the roof to the open air or may be connected to other vents at a point not less than six (6) inches (152 mm) above the flood level rim of the fixtures served. Drainage fittings shall be used on all parts of the vent below the floor level and a minimum slope of one-quarter (1/4) inch per foot (20.9 mm/m) back to the drain shall be maintained. The return bend used under the drain board shall be a one (1) piece fitting or an assembly of a forty-five (45) degree (0.79 radius), a ninety (90) degree (1.6 radius) and a forty-five (45) degree (0.79 radius) elbow in the order named. Pipe sizing shall be as elsewhere required in this Code. The island sink drain, upstream of the return vent, shall serve no other fixtures. An accessible cleanout shall be installed in the vertical portion of the foot vent.

Appendix Q is re-titled Swimming Pools, Spas and Hot Tubs and amended to read as follows:

Appendix Q. Swimming Pools, Spas and Hot Tubs.

SECTION AQ101 GENERAL

AQ101.1 General. The provisions of this appendix shall control the design and construction of swimming pools, spas and hot tubs installed in or on the lot of a one- or two-family dwelling.

AQ101.2 Pools in flood hazard areas. Pools that are located in flood hazard areas established by Table R301.2(1), including above-ground pools, on-ground pools and in-ground pools that involve placement of fill, shall comply with Section AQ101.2.1 or AQ101.2.2.

Exception: Pools located in riverine flood hazard areas which are outside of designated floodways.

AQ101.2.1 Pools located in designated floodways. Where pools are located in designated floodways, documentation shall be submitted to the building official which demonstrates that the construction of the pool will not increase the design flood elevation at any point within the jurisdiction.

AQ101.2.2 Pools located where floodways have not been designated. Where pools are located where design flood elevations are specified but floodways have not been designated, the applicant shall provide a floodway analysis that demonstrates that the proposed pool will not increase the design flood elevation more than 1 foot (305 mm) at any point within the jurisdiction.

SECTION AQ102 DEFINITIONS

AQ102.1 General. For the purposes of these requirements, the terms used shall be defined as follows and as set forth in Chapter 2.

ABOVE-GROUND/ON-GROUND POOL. See "Swimming pool."

BARRIER. A fence, wall, building wall or combination thereof which completely surrounds the swimming pool and obstructs access to the swimming pool.

HOT TUB. See "Swimming pool."

IN-GROUND POOL. See "Swimming pool."

RESIDENTIAL. That which is situated on the premises of a detached one- or two-family dwelling, or a one-family townhouse not more than three stories in height.

SPA, NONPORTABLE. See "Swimming pool."

SPA, PORTABLE. A nonpermanent structure intended for recreational bathing, in which all controls, water-heating and water-circulating equipment are an integral part of the product.

SWIMMING POOL. Any structure intended for swimming or recreational bathing that contains water more than 24 inches (610 mm) deep. This includes in-ground, above-ground and on-ground swimming pools, hot tubs and spas.

SWIMMING POOL, INDOOR. A swimming pool which is totally contained within a structure and surrounded on all four sides by the walls of the enclosing structure.

SWIMMING POOL, OUTDOOR. Any swimming pool which is not an indoor pool.

SECTION AG103 SWIMMING POOLS

AQ103.1 In-ground pools. In-ground pools shall be designed and constructed in compliance with ANSI/NSPI-5.

AQ103.2 Above-ground and on-ground pools. Above-ground and on-ground pools shall be designed and constructed in compliance with ANSI/NSPI-4.

AQ103.3 Pools in flood hazard areas. In flood hazard areas established by Table R301.2(1), pools in coastal high-hazard areas shall be designed and constructed in compliance with ASCE 24.

SECTION AQ104 SPAS AND HOT TUBS

AQ104.1 Permanently installed spas and hot tubs. Permanently installed spas and hot tubs shall be designed and constructed in compliance with ANSI/NSPI-3.

AQ104.2 Portable spas and hot tubs. Portable spas and hot tubs shall be designed and constructed in compliance with ANSI/NSPI-6.

SECTION AQ105 BARRIER REQUIREMENTS

AQ105.1 Application. The provisions of this appendix shall control the design of barriers for residential swimming pools, spas and hot tubs. These design controls are intended to provide protection against potential drownings and near-drownings by restricting access to swimming pools, spas and hot tubs.

AQ105.2 Outdoor swimming pool. An outdoor swimming pool, including an in-ground, above-ground or on-ground pool, hot tub or spa shall be surrounded by a barrier which shall comply with the following:

1. The top of the barrier shall be at least 48 inches (1219mm) above grade measured on the side of the barrier, which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be 2 inches (51mm) measured on the side of the barrier, which faces away from the swimming pool. Where the top of the pool structure is above grade, such as an above-ground pool, the barrier may be at ground level, such as the pool structure, or mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be 4 inches (102mm).

2. Openings in the barrier shall not allow passage of a 4-inch-diameter (102mm) sphere.

3. Solid barriers which do not have openings, such as a masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

4. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches (1143mm), the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not exceed 1.75 inches (44mm) in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.

5. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches (1143 mm) or more, spacing between vertical members shall not exceed 4 inches (102 mm). Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.

6. Maximum mesh size for chain link fences shall be a 2.25-inch (57 mm) square unless the fence is provided with slats fastened at the top or the bottom which reduce the openings to not more than 1.75 inches (44 mm).

7. Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall not be more than 1.75 inches (44 mm).

8. Access gates shall comply with the requirements of Section AQ105.2, Items 1 through 7, and shall be equipped to accommodate a locking device. Pedestrian access gates shall open outward away from the pool and shall be self-closing and have a self-latching device. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches (1372 mm) from the bottom of the gate, the release mechanism and openings shall comply with the following:

    8.1. The release mechanism shall be located on the pool side of the gate at least 3 inches (76 mm) below the top of the gate, and

    8.2 The gate and barrier shall have not opening greater than 0.5 inch (13 mm) within 18 inches (457 mm) of the release mechanism.

9. Where a wall of a dwelling serves a part of the barrier one of the following conditions shall be met:

    9.1. The pool shall be equipped with a powered safety cover in compliance with ASTM F1346; or

    9.2. Doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and/or its screen, if present, are opened. The alarm shall be listed and labeled in accordance with UL 2017. The deactivation switch (es) shall be located at least 54 inches (1372 mm) above the threshold of the door; or

    9.3. Other means of protection, such as self-closing doors with self-latching devices, which are approved by the governing body, shall be acceptable as long as the degree of protection afforded is not less than the protection afforded by Item 9.1 or 9.2 described above.

10. Where an above-ground pool structure is used as a barrier or where the barrier is mounted on top of the pool structure, and the means of access is a ladder or steps, then:

    10.1. The ladder or steps shall be capable of being secured, locked or removed to prevent access, or

    10.2. The ladder or steps shall be surrounded by a barrier which meets the requirements of Section AQ105.2, Items 1 through 9. When the ladder or steps are secured, locked or removed, any opening created shall not allow the passage of a 4-inchdiameter (102 mm) sphere.

AQ105.3 Indoor swimming pool. Walls surrounding an indoor swimming pool shall comply with Section AQ105.2, Item 9.

AQ105.4 Prohibited locations. Barriers shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb them.

AQ105.5 Barrier exceptions. Spas or hot tubs with a safety cover which complies with ASTM F 1346, as listed in Section AQ107, shall be exempt from the provisions of this appendix

SECTION AQ106 ENTRAPMENT PROTECTION FOR SWIMMING POOL AND SPA SUCTION OUTLETS

AQ106.1 General. Suction outlets shall be designed and installed in accordance with ANSI/APSP-7.

SECTION AQ107 ABBREVIATIONS

AQ107.1 General.

ANSI—American National Standards Institute
11 West 42nd Street
New York, NY 10036

APSP—Association of Pool and Spa Professionals
NSPI—National Spa and Pool Institute
2111 Eisenhower Avenue
Alexandria, VA 22314

ASCE—American Society of Civil Engineers
1801 Alexander Bell Drive
Reston, VA 98411-0700

ASTM—ASTM International
100 Barr Harbor Drive
West Conshohocken, PA 19428

UL—Underwriters Laboratories, Inc.
333 Pfingsten Road
Northbrook, IL 60062-2096

SECTION AQ108 REFERENCED STANDARDS

AQ108.1 General.

ANSI/NSP

ANSI/NSPI-3—99	Standard for Permanently Installed Residential Spas	AQ104.1
ANSI/NSPI-4—99	Standard for Above-ground/ On-ground Residential Swimming Pools	AQ103.2
ANSI/NSPI-5—03	Standard for Residential In-ground Swimming Pools	AQ103.1
ANSI/NSPI-6—99	Standard for Residential Portable Spas	AQ104.2

ANSI/APSP

ANSI/APSP-7—06	Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs and Catch Basins	AQ106.1

ASCE

ASCE/SEI-24—05	Flood-resistant Design and Construction	AQ103.3

ASTM

ASTM F 1346—91 (2003)	Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools Spas and Hot Tubs	AQ105.2, AQ105.5

UL

UL 2017—2000	Standard for General-purpose Signaling Devices and Systems—with revisions through June 2004	AQ105.2

SECTION 2. All provisions of the Ordinances of the City of Farmers Branch, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. That any person violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmers Branch as heretofore amended and, upon conviction, shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000.00).

SECTION 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:11/18/16:81287)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3407

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Ordinance

Agenda Number: G.6

Consider adopting Ordinance No. 3407 adopting the 2015 International Energy Conservation Code as amended; and take appropriate action.

BACKGROUND:
The City has been and is currently using the 2012 International Energy Conservation Code since March of 2014. Model construction codes such as the IECC are updated and re-published on a three year cycle. Staff is recommending updating to the most current edition, the 2015 International Energy Conservation Code. One notable change to the 2015 IECC is separate chapters dealing with existing buildings were created inside the commercial and residential provisions. The State of Texas has not only recognized the 2015 IECC, but has made it required statewide. Currently, all of our neighboring municipalities have adopted and are enforcing the 2015 IBC with the exception of the City of Coppell and the Town of Addison.

RECOMMENDATION:
City Administration recommends approval of Ordinance No. 3407, as presented.

POSSIBLE COUNCIL ACTION:
1. I move to approve Ordinance No. 3407 as presented
2. I move to approve Ordinance No. 3407, with the following modifications…
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Ordinance No. 3407

ORDINANCE NO. 3407

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 22 TITLED "BUILDINGS AND BUILDING REGULATIONS" BY AMENDING ARTICLE VII.7 TITLED "ENERGY CONSERVATION CODE" TO ADOPT THE PROVISIONS OF THE 2015 EDITION OF THE INTERNATIONAL ENERGY CODE WITH LOCAL AMENDMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS ($2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known generally as the "International Codes"); and

WHEREAS, the City of Farmers Branch has been involved throughout the development process of the International Codes through participation with the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG); and

WHEREAS, the creation of the 2015 editions of the International Codes by the ICC was in conjunction with the International Conference of Building Officials (ICBO), the organization whose codes the City of Farmers Branch has adopted since the 1970s; and

WHEREAS, the International Codes have been reviewed by the NCTCOG and City staff; and

WHEREAS, the City's building and construction codes are intended to be updated periodically, with the 2012 editions of the International Codes being the most current published building and construction codes for which local amendments have been developed; and

WHEREAS, the City Council of the City of Farmers Branch has determined that it is in the best interest of the citizens of the City of Farmers Branch to adopt the 2015 editions of the International Codes, as stated herein, as the minimum standards for the construction, use, occupancy and maintenance of buildings and structures within the City limits, as set forth herein, and to adopt local amendments to said codes in order to account for unique local practices and/or conditions relating to the design and construction of structures within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Chapter 22 titled "Buildings and Building Regulations" of the Code of Ordinances of the City of Farmers Branch, Texas, is amended by amending Article VII.7 titled "Energy Conservation Code" to read as follows:

ARTICLE VII.7. ENERGY CONSERVATION CODE

Sec. 22-240. Adoption of International Energy Conservation Code; purpose.

The 2015 Edition of the *International Energy Conservation Code*, as published by the International Code Council and as amended pursuant to Sec. 22-241, is hereby adopted. Copies of the Energy Conservation Code are on file in the office of the city secretary for permanent record and inspection and are incorporated into this section as if fully set forth herein. The chief building official, or his authorized representative, is hereby authorized and directed to enforce all provisions of the Energy Conservation Code. For purposes of this Article, the phrase "Energy Conservation Code" means collectively (i) the 2015 Edition of the International Energy Conservation Code, as published by the International Code Council and (ii) the local amendments adopted pursuant to Sec. 22-241.

Sec. 22-241. Local Amendments to International Energy Code.

For purposes of enforcement of the provisions of the Energy Conservation Code within the incorporated limits of the City, the following sections, paragraphs, and sentences of the *2015 Edition of the International Energy Conservation Code* are hereby amended as follows:

Section C102/R102 is amended by adding a new Section C102.1.2 and a new Section R102.1.2 to read as follows:

C102.1.2 Alternative compliance. A building certified by a national, state, or local accredited energy efficiency program and determined by the Energy Systems Laboratory to be in compliance with the energy efficiency requirements of this section may, at the option of the Code Official, be considered in compliance. The United States Environmental Protection Agency's Energy Star Program certification of energy code equivalency shall be considered in compliance.

R102.1.2 Alternative compliance. A building certified by a national, state, or local accredited energy efficiency program and determined by the Energy Systems Laboratory to be in compliance with the energy efficiency requirements of this section may, at the option of the Code Official, be considered in compliance. The United States Environmental Protection Agency's Energy Star Program certification of energy code equivalency shall be considered in compliance. Regardless of the program or the path to compliance, each 1- and 2-family dwelling shall be tested for air and duct leakage as prescribed in Section R402.4 and R403.3.3 respectively.

Section C202 and R202 are amended by adding definitions for the phrases "Projection Factor" to read as follows:

PROJECTION FACTOR. The ratio of the horizontal depth of the overhang, eave or permanently attached shading device, divided by the distance measured vertically from the bottom

of the fenestration glazing to the underside of the overhang, eave or permanently attached shading device.

Section R202 is amended by adding a definition for the phrase "Dynamic Glazing" to read as follows:

DYNAMIC GLAZING. Any fenestration product that has the fully reversible ability to change it performance properties, including *U*-factor, solar heat gain coefficient (SHGC), or visible transmittance (VT).

Table R402.1.2 is amend by changing the WOOD FRAME WALL R-VALUE for CLIMATE ZONE 3 to read "13".

Table R402.1.4 is amend by changing the WOOD FRAME WALL U-FACTOR for CLIMATE ZONE 3 to read "0.082".

Section R402.3.2 is amend by adding a paragraph and table following the "Exception" to read as follows:

Where vertical fenestration is shaded by an overhang, eave, or permanently attached shading device, the SHGC required in Table R402.1.2 shall be reduced by using the multipliers in Table R402.3.2 SHGC Multipliers for Permanent Projections.

Table R402.3.2 SHGC Multipliers for Permanent Projections [a]

Projection Factor	SHGC Multiplier (all Other Orientation)	SHGC Multiplier (North Oriented)
0 - 0.10	1.00	1.00
>0.10 – 0.20	0.91	0.95
>0.20 – 0.30	0.82	0.91
>0.30 – 0.40	0.74	0.87
>0.40 – 0.50	0.67	0.84
>0.50 – 0.60	0.61	0.81
>0.60 – 0.70	0.56	0.78
>0.70 – 0.80	0.51	0.76
>0.80 – 0.90	0.47	0.75
>0.90 – 1.00	0.44	0.73

[a] North oriented means within 45 degrees of true north.

Section R402.4.1.2 is amended be amending the first sentence to read as follows:

R402.4.1.2 Testing. The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour in Climate Zone 3....

Section C402.2/R402.2 is amended by adding a new Section C402.2.7 and R402.2.14 to read as follows:

Section C402.2.7/R402.2.14 Insulation installed in walls. To insure that insulation remains in place, insulation installed in walls shall be totally enclosed on all sides consisting of framing lumber, gypsum, sheathing, wood structural panel sheathing or other equivalent material approved by the building official.

Section R402.4.1.2 is amended by adding the following at the end of the section:

Mandatory testing shall only be performed by individuals that are certified to perform air infiltration testing certified by national or state organizations as approved by the building official. The certified individuals must be an independent third-party entity, and may not be employed; or have any financial interest in the company that constructs the structure.

Section R403.3.3 is amended by adding the following at the end of the section:

Mandatory testing shall only be performed by individuals that are certified to perform duct testing leakage testing certified by national or state organizations as approved by the building official. The certified individuals must be an independent third-party entity, and may not be employed; or have any financial interest in the company that constructs the structure.

Section 405.6.2 is amended by add the following sentence to the end of paragraph:

Acceptable performance software simulation tools may include, but are not limited to, REM Rate™, Energy Gauge and IC3. Other performance software programs accredited by RESNET BESTEST and having the ability to provide a report as outlined in R405.4.2 may also be deemed acceptable performance simulation programs and may be considered by the building official.

TABLE R406.4 is amended to read as follows:

TABLE R406.4[1]
MAXIMUM ENERGY RATING INDEX

CLIMATE ZONE	ENERGY RATING INDEX
3	65

[1] This table is effective until August 31, 2019.

TABLE R406.4[2]
MAXIMUM ENERGY RATING INDEX

CLIMATE ZONE	ENERGY RATING INDEX
3	63

[2] The table is effective from September 1, 2019 to August 31, 2022.

TABLE R406.4[3]
MAXIMUM ENERGY RATING INDEX

CLIMATE ZONE	ENERGY RATING INDEX
3	59

[3] This table is effective on or after September 1, 2022.

SECTION 2. All provisions of the Ordinances of the City of Farmers Branch, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. That any person violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmers Branch as heretofore amended and, upon conviction, shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000.00).

SECTION 6. This ordinance shall take effect on the first day of the calendar month following its passage in accordance with the provisions of the charter and state law.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE 13TH DAY OF DECEMB ER, 2016.

ATTEST: **APPROVED:**

_____ _____

Amy Piukana, City Secretary Bob Phelps, Mayor

APPROVED AS TO FORM:

_____

Peter G. Smith, City Attorney
(kbl:11/18/16:81277)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3408

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Ordinance

Agenda Number: G.7

Consider adopting Ordinance No. 3408 approving the 2015 International Mechanical Code as amended; and take appropriate action.

BACKGROUND:
The City has been and is currently using the 2012 International Mechanical Code since March of 2014. Model construction codes such as the IMC are updated and re-published on a three year cycle. Staff is recommending updating to the most current edition, the 2015 International Mechanical Code. Some notable changes to the 2015 IMC are new ventilation requirements for enclosed parking garages and new regulations regarding construction of exhaust shafts serving kitchen hoods in multi-story buildings. Currently, all of our neighboring municipalities have adopted and are enforcing the 2015 IMC with the exception of the City of Coppell and the Town of Addison.

RECOMMENDATION:
City Administration recommends approval of Ordinance No. 3408, as presented.

POSSIBLE COUNCIL ACTION:
1. I move to approve Ordinance No. 3408 as presented
2. I move to approve Ordinance No. 3408, with the following modifications…
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Ordinance No. 3408

ORDINANCE NO. 3408

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 22 "BUILDINGS AND BUILDING REGULATIONS" BY AMENDING ARTICLE VI "MECHANICAL STANDARDS" ADOPTING THE 2015 EDITION OF THE INTERNATIONAL MECHANICAL CODE WITH AMENDMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS ($2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known generally as the "International Codes"); and

WHEREAS, the City of Farmers Branch has been involved throughout the development process of the International Codes, through participation with the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG); and

WHEREAS, the creation of the 2015 editions of the International Codes by the ICC was in conjunction with the International Conference of Building Officials (ICBO), the organization whose codes the City of Farmers Branch has adopted since the 1970s; and

WHEREAS, the International Codes have been reviewed by the NCTCOG and City staff; and

WHEREAS, the City's building and construction codes are intended to be updated periodically, with the 2015 editions of the International Codes being the most current published building and construction codes for which local amendments have been developed; and

WHEREAS, the City Council of the City of Farmers Branch has determined that it is in the best interest of the citizens of the City of Farmers Branch to adopt the 2015 editions of the International Codes, as stated herein, as the minimum standards for the construction, use, occupancy and maintenance of buildings and structures within the City limits, as set forth herein, and to adopt local amendments to said codes in order to account for unique local practices and/or conditions relating to the design and construction of structures within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Chapter 22 "Buildings and Building Regulations" of the Code of Ordinances of the City of Farmers Branch, Texas, is amended by amending Article VI "Mechanical Standards", to read as follows:

ARTICLE VI. MECHANICAL STANDARDS

Sec. 22-191. Adoption of International Mechanical Code; purpose.

The 2015 Edition of the *International Mechanical Code*, as published by the International Code Council and as amended pursuant to Sec. 22-192, is hereby adopted. Copies of the Mechanical Code are on file in the office of the city secretary for permanent record and inspection and are incorporated into this section as if fully set forth herein. The chief building official, or his authorized representative, is hereby authorized and directed to enforce all provisions of the Mechanical Code. For purposes of this Article, the phrase "Mechanical Code" means collectively (i) the 2015 Edition of the International Mechanical Code, as published by the International Code Council and (ii) the local amendments adopted pursuant to Sec. 22-192

Sec. 22-192. Amendments to International Mechanical Code.

For purposes of enforcement of the provisions of the Mechanical Code within the incorporated limits of the City, the following sections, paragraphs, and sentences of the *2015 Edition of the International Mechanical Code* are hereby amended as follows:

Section 102.8 is amended to read as follows:

102.8 Referenced codes and standards. The codes and standards referenced herein shall be those that are listed in Chapter 15 and such codes, when specifically adopted, and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference to NFPA 70 or the ICC *Electrical Code* shall mean the Electrical Code as adopted.

Section 106.3.1.1 is amended to read as follows"

106.3.1.1 License Required. All applications for permits must be made by a mechanical contractor who holds a valid registered license as a Texas Air Conditioning and Refrigeration Contractor issued by the State of Texas License and Registration Board. Mechanical contractors shall register their license with the City.

> **EXCEPTION:** A property owner who is the current occupant of a homestead may apply for and obtain a permit to perform mechanical work on and for said homestead, provided all work which is normally required to be performed by a licensed person is performed by the property owner, all the work is performed in conformance with this code and no other City, County, State or Federal law is violated.

Section 106.5.2 is amended to read as follows:

106.5.2 Fee schedule. The fees to be paid for mechanical work shall be set forth in the Fee Schedules of the City of Farmers Branch.

Section 108.4 is amended to read as follows:

108.4 Violation penalties. Persons who shall violate a provision of the Mechanical Code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair mechanical work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a misdemeanor, and upon conviction thereof in Municipal Court, shall be punishable by a fine of not more than two thousand dollars ($2,000.00) for each offense.

Sections 109.1 and 109.1.1 are amended to read as follows:

109.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals established by ordinance. The board shall be governed by the enabling ordinance.

> **109.1.1 Limitations of Authority.** The board of appeals shall have no authority relative to interpretations of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.

Section 109.2 is amended to read as follows:

109.2 Appointment. The members of the Zoning Board of Adjustment of the City of Farmers Branch shall be appointed as the board of appeals.

Sections 109.2.5 through 109.7 are deleted.

Section 306.3 is amended to read as follows:

306.3 Appliances in attics. Attics containing appliances shall be provided *{intervening text unchanged}* . . . side of the appliance. The clear *access* opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), or larger where such dimensions are not large enough to allow removal of the largest appliance. A walkway to an appliance shall be rated as a floor approved by the building official. As a minimum, for *access* to the attic space, provide one of the following:

1. A permanent stair.

2. A pull down stair with a minimum 300 lb (136 kg) capacity.

3. An *access* door from an upper floor level.

4. *Access* Panel may be used in lieu of items 1, 2, and 3 with prior approval of the code official due to building conditions.

   Exceptions:

   1. The passageway and level service space are not required where the appliance is capable of being serviced and removed… *{remainder of section unchanged}*

Section 306.5 is amended to read as follows:

306.5 Equipment and appliances on roofs or elevated structures. Where *equipment* requiring *access* or appliances are located on an elevated structure or the roof of a building such that personnel will have to climb higher than 16 feet (4877 mm) above grade to access, an a permanent interior or exterior means of access shall be provided. Permanent exterior ladders providing roof *access* need not extend closer than 8 12 feet (2438 mm) to the finish grade or floor level below and shall extend to the *equipment* and appliances' level service space. Such *access* shall *{intervening language unchanged}* on roofs having a slope greater than 4 units vertical in 12 units horizontal (33-percent slope).... *{remaining text unchanged}*.

Section 306.5.1 is amended to read as follows:

306.5.1 Sloped roofs. Where appliances, *equipment*, fans or other components that require service are installed on roof having slopes greater than 3 units vertical in 12 units horizontal (25- percent slope) or greater and having an edge more than 30 inches (762 mm) above grade at such edge, a catwalk at least 16 inches in width with substantial cleats spaced not more than 16 inches apart shall be provided from the roof *access* to a level platform at the appliance. The level platform shall be provided on each side of the appliance to which *access* is required for service, repair or maintenance. The platform shall be not less than 30 inches (762 mm) in any dimension and shall be provided with guards. The guards shall extend not less than 42 inches (1067 mm) above the platform, shall be constructed so as to prevent the passage of a 21-inch-diameter (533 mm) sphere and shall comply with the loading requirements for guards specified in the *International Building Code*.

Section 306.5.1.1 is amended to read as follows:

306.5.1.1 Catwalk. On roofs having slopes greater than 4 units vertical in 12 units horizontal, a catwalk at least 16 inches in width with substantial cleats spaced not more than 16 inches apart shall be provided from the roof access to the working platform at the appliance. A receptacle outlet shall be provided at or near the appliance location in accordance with the Electrical Code.

Section 306 is amended by adding Section 306.6 to read as follows:

306.6 Water heaters above ground or floor. When the mezzanine or platform in which a water heater is installed is more than eight (8) feet (2438 mm) above the ground or floor level, it shall be made accessible by a stairway or permanent ladder fastened to the building.

> **Exception:** A maximum 10 gallon water heater (or larger with approval) is capable of being accessed through a lay-in ceiling and the water heater installed is not more than ten (10) feet (3048 mm) above the ground or floor level and may be reached with a portable ladder.

306.6.1 Whenever the mezzanine or platform is not adequately lighted or access to a receptacle outlet is not obtainable from the main level, lighting and a receptacle outlet shall be provided in accordance with Section 306.3.1.

Section 307.2.3 is amended by amending numbered paragraph 2 to read as follows:

2. A separate overflow drain line shall be connected to the drain pan provided with the equipment. Such overflow drain shall discharge to a conspicuous point of disposal to alert occupants in the event of a stoppage of the primary drain. The overflow drain line shall connect to the drain pan at a higher level than the primary drain connection. However, the conspicuous point shall not create a hazard such as dripping over a walking surface or other areas so as to create a nuisance.

Section 403.2.1 is amended by adding a paragraph 5 to read as follows:

5. Toilet rooms within private dwellings that contain only a water closet, lavatory or combination thereof may be ventilated with an *approved* mechanical recirculating fan or similar device designed to remove odors from the air.

Section 501.3 is amended by adding a new paragraph 4 under "Exceptions" to read as follows:

4. Toilet room exhaust ducts may terminate in a warehouse or shop area when infiltration of outside air is present.

Section 607.5.1 is amended to read as follows:

607.5.1 Fire Walls. Ducts and air transfer openings permitted in fire walls in accordance with Section 705.11 of the International Building Code shall be protected with listed fire dampers installed in accordance with their listing**.** For hazardous exhaust systems see Section 510.1-510.9 IMC.

SECTION 2. All provisions of the Ordinances of the City of Farmers Branch, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. Any person violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmers Branch as heretofore amended and, upon conviction, shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000.00).

SECTION 6. This ordinance shall take effect on the first day of the calendar month following its passage in accordance with the provisions of the charter and state law.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:11/18/16:81280)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3409

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Ordinance

Agenda Number: G.8

Consider adopting Ordinance No. 3409 adopting the 2015 International Plumbing Code as amended; and take appropriate action.

BACKGROUND:
The City has been and is currently using the 2012 International Plumbing Code since March of 2014. Model construction codes such as the IPC are updated and re-published on a three-year cycle. Staff is recommending updating to the most current edition, the 2015 International Plumbing Code. Some notable changes to the 2015 IPC are not requiring public toilet facilities in occupancies that have limited areas for public access and not requiring a primer to drain, waste and vent PVC connections four inches and smaller before applying cement. Currently, all of our neighboring municipalities have adopted and are enforcing the 2015 IPC with the exception of the City of Coppell and the Town of Addison.

RECOMMENDATION:
City Administration recommends approval of Ordinance No. 3409, as presented

POSSIBLE COUNCIL ACTION:
1. I move to approve Ordinance No. 3409 as presented.
2. I move to approve Ordinance No. 3409, with the following modifications…
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Ordinance No. 3409

ORDINANCE NO. 3409

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 22 "BUILDINGS AND BUILDING REGULATIONS", ARTICLE VII "PLUMBING STANDARDS" TO ADOPT THE PROVISIONS OF THE 2015 EDITION OF THE INTERNATIONAL PLUMBING CODE WITH AMENDMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS ($2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known generally as the "International Codes"); and

WHEREAS, the City of Farmers Branch has been involved throughout the development process of the International Codes, through participation with the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG); and

WHEREAS, the creation of the 2015 editions of the International Codes by the ICC was in conjunction with the International Conference of Building Officials (ICBO), the organization whose codes the City of Farmers Branch has adopted since the 1970s; and

WHEREAS, the International Codes have been reviewed by the NCTCOG and City staff; and

WHEREAS, the City's building and construction codes are intended to be updated periodically, with the 2012 editions of the International Codes being the most current published building and construction codes for which local amendments have been developed; and

WHEREAS, the City Council of the City of Farmers Branch has determined that it is in the best interest of the citizens of the City of Farmers Branch to adopt the 2015 editions of the International Codes, as stated herein, as the minimum standards for the construction, use, occupancy and maintenance of buildings and structures within the City limits, as set forth herein, and to adopt local amendments to said codes in order to account for unique local practices and/or conditions relating to the design and construction of structures within the City;

SECTION 1. Chapter 22 titled "Buildings and Building Regulations" of the Code of Ordinances of the City of Farmers Branch, Texas, is amended by amending Article VII "Plumbing Standards" to read as follows:

ARTICLE VII. PLUMBING STANDARDS

Sec. 22-226. Adoption of International Plumbing Code; purpose.

The 2015 Edition of the *International Plumbing Code*, as published by the International Code Council and as amended pursuant to Sec. 22-227, is hereby adopted. Copies of the Plumbing Code are on file in the office of the city secretary for permanent record and inspection and are incorporated into this section as if fully set forth herein. The chief building official, or his authorized representative, is hereby authorized and directed to enforce all provisions of the Plumbing Code. For purposes of this Article, the phrase "Plumbing Code" means collectively (i) the 2015 Edition of the *International Plumbing Code*, as published by the International Code Council and (ii) the local amendments adopted pursuant to Sec. 22-227

Sec. 22-227. Amendments to International Plumbing Code.

For purposes of enforcement of the provisions of the Plumbing Code within the incorporated limits of the City, the following sections, paragraphs, and sentences of the 2015 Edition of the *International Plumbing Code* are hereby amended as follows:

<u>Table of Contents, Chapter 7, Section 714 is amended to read as follows:</u>

714 Engineered Drainage Design 67

<u>Section 102.8 is amended to read as follows:</u>

102.8 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 13 and such codes, when specifically adopted, and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference. Where the differences occur between provisions of this code and the referenced standards, the provisions of this code shall be the minimum requirements. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference to NFPA 70 or the ICC *Electrical Code* shall mean the Electrical Code as adopted

<u>Sections 106.4.1 and 106.4.2 shall read as follows:</u>

106.4.1 Plumbing License Required. All applications for plumbing permits must be made by a responsible master plumber who holds a valid registered license as a Master Plumber issued by the Texas State Plumbing Examiners Board. Plumbing contractors shall register their license with the City.

> **EXCEPTION:** A property owner who is the current occupant of a homestead may apply for and obtain a permit to perform plumbing work on and for the said homestead, provided all work which is required to be performed by a licensed plumber is done by the property owner, all the work is performed in conformance with this code and no other City, County, State or Federal law is violated.

106.4.2 Irrigators License Required. All applications for irrigation permits must be made by a plumbing contractor who holds a valid registered license as a Master Plumber or an irrigation contractor who holds an Irrigators License issued by the Texas Irrigators Advisory Council of Texas Natural Resource and Conservation Commission. Irrigation contractors shall register license with the City annually, such registration shall expire December 31 of each year.

> **EXCEPTION:** A property owner who is the current occupant of a homestead may apply for and obtain a permit to perform irrigation work on and for said homestead, provided all work which is required to be performed by a licensed irrigator is performed by the property owner, all the work is performed in conformance with this code and no other City, County, State or Federal law is violated.

Sections 106.6.2 and 106.6.3 are amended to read as follows:

106.6.2 Fee schedule. The fees for all plumbing work shall be adopted by resolution or ordinance of the City Council.

106.6.3 Fee Refunds. The code official shall establish a policy for authorizing the refunding of fees.

Section 108.4 shall read as follows:

108.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair plumbing work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a misdemeanor, and upon conviction thereof in Municipal Court, shall be punishable by a fine of not more than two thousand dollars ($2,000.00) for each offence. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Sections 109.1 and 109.2 shall be amended to read as follows:

109.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals established by ordinance. The board shall be governed by the enabling ordinance.

> **109.1.1 Limitations of Authority.** The board of appeals shall have no authority relative to interpretations of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.

109.2 Appointment. The members of the Zoning Board of Adjustment of the City of Farmers Branch shall be appointed as the board of appeals.

Sections 109.2.5 through 109.7 are deleted.

Section 305.4.1 is amended to read as follows:

305.4.1 Sewer depth. Building sewers shall be a minimum of 12 inches (304 mm) below grade.

Section 305.7 is amended to read as follows:

305.7 Protection of components of plumbing system. Components of a plumbing system installed within 3 feet along alleyways, driveways, parking garages or other locations in a manner in which they could be exposed to damage shall be recessed into the wall or otherwise protected in an *approved* manner.

Section 314.2.1 is amended to read as follows:

314.2.1 Condensate disposal. Condensate from all cooling coils and evaporators shall be conveyed from the drain pan outlet to an *approved* place of disposal. ... {intervening text unchanged} **...** Condensate shall not discharge into a street, alley, sidewalk, rooftop, or other areas so as to cause a nuisance.

Section 409.2 is amended to read as follows:

409.2 Water connection. The water supply to a commercial dishwashing machine shall be protected against backflow by an air gap or backflow preventer in accordance with Section 608. {remainder of section unchanged}

Section 412.4 is amended to read as follows:

412.4 Required location. Floor drains shall be installed in the following areas.

1. In public coin-operated laundries and in the central washing facilities of multiple family dwellings, the rooms containing automatic clothes washers shall be provided with floor drains located to readily drain the entire floor area. Such drains shall have a minimum outlet of not less than 3 inches (76 mm) in diameter.

2. Commercial kitchens. In lieu of floor drains in commercial kitchens, the code official may accept floor sinks.

3. Public restrooms.

Section 419.3 is amended to read as follows:

419.3 Surrounding material. Wall and floor space to a point 2 feet (610 mm) in front of a urinal lip and 4 feet (1219 mm) above the floor and at least 2 feet (610 mm) to each side of the urinal shall be waterproofed with a smooth, readily cleanable, hard, nonabsorbent material.

Section 502.3 is amended to read as follows:

502.3 Applicances in attics. Attics containing a water heater shall be provided {intervening language unchanged} side of the water heater. The clear access opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), or larger where such dimensions be not less than 20 inches by 30 inches(508mm by 762mm) where such dimensions are large enough to allow removal of the water heater. A walkway to an appliance shall be rated as a floor as approved by the building official. As a minimum, for access to the attic space, provide one of the following:

1. A permanent stair.

2. A pull down stair with a minimum 300 lb (136 kg) capacity.

3. An access door from an upper floor level.

4. Access Panel may be used in lieu of items 1, 2, and 3 with prior approval of the code official due to building conditions.

Exceptions:

1. The passageway and level service space are not required where the appliance is capable of being serviced and removed… {remainder of section unchanged}

Section 502 is amended by adding Section 502.6 to read as follows:

502.6 Water heaters above ground or floor. When the attic, roof, mezzanine or platform in which a water heater is installed is more than eight (8) feet (2438 mm) above the ground or floor level, it shall be made accessible by a stairway or permanent ladder fastened to the building.

Exception: A max 10 gallon water heater (or larger with approval) is capable of being accessed through a lay-in ceiling and a water heater is installed is not more than ten (10) feet (3048 mm) above the ground or floor level and may be reached with a portable ladder.

Section 504.6 is amended to read as follows:

504.6 Requirements for discharge piping. The discharge piping serving a pressure relief valve, temperature relief valve or combination thereof shall:

1. Not be directly connected to the drainage system.

2. Discharge through an air gap.

3. Not be smaller than the diameter of the outlet of the valve served and shall discharge full size to the air gap.

4. Serve a single relief device and shall not connect to piping serving any other relief device or equipment.

   Exception: Multiple relief devices may be installed to a single T & P discharge piping system when *approved* by the administrative authority and permitted by the manufactures installation instructions and installed with those instructions.

5. Discharge to an indirect waste receptor or to the outdoors.

6. Discharge in a manner that does not cause personal injury or structural damage.

7. Discharge to a termination point that is readily observable by the building occupants.

8. Not be trapped.

9. Be installed so as to flow by gravity.

10. Terminate not more than 6 inches and not less than two time the discharge pipe diameter above the floor or flood level rim of the waste receptor.

11. Not have a threaded connection at the end of such piping.

12. Not have valves or tee fittings.

13. Be constructed of those materials listed in Section 605.4 or materials tested, rated and *approved* for such use in accordance with ASME A112.4.1.

<u>Section 504.7.1 is amended to read as follows</u>:

504.7.1 Pan size and drain: The pan shall be not less than 11/2 inches (38 mm) in depth and shall be of sufficient size and shape to receive all dripping or condensate from the tank or water heater. The pan shall be drained by an indirect waste pipe having a diameter of not less than 3/4 inch (19 mm). Piping for safety pan drains shall be of those materials listed in Table 605.4. Multiple pan drains may terminate to a single discharge piping system when *approved* by the administrative authority and permitted by the manufactures installation instructions and installed with those instructions.

<u>Section 604.4 is amended by adding Section 604.4.1 to read as follows:</u>

604.4.1 State maximum flow rate. Where the State mandated maximum flow rate is more restrictive than those of this section, the State flow rate shall take precedence.

<u>Section 606.1 is amended by deleting numbered paragraphs 4 and 5.</u>

<u>Section 606.2 is amended to read as follows:</u>

606.2 Location of shutoff valves. Shutoff valves shall be installed in the following locations:

1. On the fixture supply to each plumbing fixture other than bathtubs and showers in one- and two-family residential occupancies, and other than in individual sleeping units that are provided with unit shutoff valves in hotels, motels, boarding houses and similar occupancies.

2. On the water supply pipe to each appliance or mechanical equipment.

Section 608.1 is amended to read as follows:

608.1 General. A potable water supply system shall be designed, installed and maintained in such a manner so as to prevent contamination from non-potable liquids, solids or gases being introduced into the potable water supply through cross-connections or any other piping connections to the system. Backflow preventer applications shall conform to applicable local regulations, Table 608.1, and as specifically stated in Sections 608.2 through 608.16.10.

Section 608.16.5 is amended to read as follows:

608.16.5 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, a double-check assembly or a reduced pressure principle backflow preventer. A valve shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

Section 608.17 is amended to read as follows:

608.17 Protection of individual water supplies. An individual water supply shall be located and constructed so as to be safeguarded against contamination in accordance with applicable local regulations. Installation shall be in accordance with Sections 608.17.1 through 608.17.8.

Section 610.1 is amended to read as follows:

610.1 General. New or repaired potable water systems shall be purged of deleterious matter and disinfected prior to utilization. The method to be followed shall be that prescribed by the health authority or water purveyor having jurisdiction or, in the absence of a prescribed method, the procedure described in either AWWA C651 or AWWA C652, or as described in this section. This requirement shall apply to “on-site” or “in-plant” fabrication of a system or to a modular portion of a system.

1. The pipe system shall be flushed with clean, potable water until dirty water does not appear at the points of outlet.

2. The system or part thereof shall be filled with a water/chlorine solution containing at least 50 parts per million (50 mg/L) of chlorine, and the system or part thereof shall be valved off and allowed to stand for 24 hours; or the system or part thereof shall be filled

with a water/chlorine solution containing at least 200 parts per million (200 mg/L) of chlorine and allowed to stand for 3 hours.

3. Following the required standing time, the system shall be flushed with clean potable water until the chlorine is purged from the system.

4. The procedure shall be repeated where shown by a bacteriological examination that contamination remains present in the system.

Exception: With prior approval the Code Official may wave this requirement when deemed unnecessary.

Section 703.6 is deleted.

Section 704 is amended by adding Section 704.5 to read as follows:

704.5 Single stack fittings. Single stack fittings with internal baffle, PVC schedule 40 or cast iron single stack shall be designed by a registered engineer and comply to a national recognized standard.

Section 705.11.2 is amended to read in its entirety as follows:

705.11.2 Solvent cementing. Joint surfaces shall be clean and free from moisture. A purple primer that conforms to ASTM F 656 shall be applied. Solvent cement not purple in color and conforming to ASTM D 2564, CSA B137.3, CSA B181.2 or CSA B182.1 shall be applied to all joint surfaces. The joint shall be made while the cement is wet and shall be in accordance with ASTM D 2855. Solvent cement joints shall be permitted above or below ground.

Section 712 is amended by adding Section 712.5 to read as follows:

712.5 Dual Pump System. All sumps shall be automatically discharged and, when in any "public use" occupancy where the sump serves more than 10 fixture units, shall be provided with dual pumps or ejectors arranged to function independently in case of overload or mechanical failure. For storm drainage sumps and pumping systems, see Section 1113.

Section 714.1 is amended to read as follows:

714.1 Design of drainage system. The sizing, design and layout of the drainage system shall be permitted to be designed by registered professional engineer using *approved* design methods.

Section 804 is amended by adding Section 804.2 to read as follows:

804.2 Special waste pipe, fittings, and components. Pipes, fittings, and components receiving or intended to receive the discharge of any fixture into which acid or corrosive chemicals are placed shall be constructed of CPVC, high silicone iron, PP, PVDF, chemical resistant glass, or glazed ceramic materials.

Section 903.1 is amended to read as follows:

903.1 Roof extension. Open vent pipes that extend through a roof shall terminate not less than six (6) inches (152 mm) above the roof. Where a roof is to be used for assembly or as a promenade, observation deck, sunbathing deck or similar purposes, open vent pipes shall terminate not less than 7 feet (2134 mm) above the roof.

Section 917, inclusive of all subsections, is deleted.

Section 1002.10 is deleted.

Section 1101.8 is amended to read in its entirety as follows:

1101.8 Cleanouts required. Cleanouts or manholes shall be installed in the storm drainage system and shall comply with the provisions of this code for sanitary drainage pipe cleanouts.

Section 1106.1 is amended to read as follows:

1106.1 General. The size of the vertical conductors and leaders, building storm drains, building storm sewers, and any horizontal branches of such drains or sewers shall be based on six (6) inches per hour rainfall rate.

Section 1108.3 is amended to read as follows:

1108.3 Sizing of secondary drains. Secondary (emergency) roof drain systems shall be sized in accordance with Section 1106. Scuppers shall be sized to prevent the depth of ponding water from exceeding that for which the roof was designed as determined by Section 1101.7. Scuppers shall not have an opening dimension of less than 4 inches (102 mm). The flow through the primary system shall not be considered when sizing the secondary roof drain system.

Section 1109 is deleted.

Section 1202.1 is amended by deleting Paragraph 2 under "Exceptions".

SECTION 2. That all provisions of the Ordinances of the City of Farmers Branch, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. That any person violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmers Branch as heretofore amended and, upon conviction, shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000.00).

SECTION 6. This ordinance shall take effect on the first day of the calendar month following its passage and publication in accordance with the provisions of the charter and state law.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:11/18/16:81286)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3410

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Ordinance

Agenda Number: G.9

Consider adopting Ordinance No. 3410 adopting the 2015 International Fuel Gas Code as amended; and take appropriate action.

BACKGROUND:
The City has been and is currently using the 2012 International Fuel Gas Code since March of 2014. Model construction codes such as the IFGC are updated and re-published on a three-year cycle. Staff is recommending updating to the most current edition, the 2015 International Fuel Gas Code. A notable change to the 2015 IFGC includes the section regarding pipe protection has been rewritten to require regulators installed on rigid pipes shall now have a union to allow for removal of the regulator. Currently, all of our neighboring municipalities have adopted and are enforcing the 2015 IFGC with the exception of the City of Coppell and the Town of Addison.

RECOMMENDATION:
City Administration recommends approval of Ordinance No. 3410, as presented.

POSSIBLE COUNCIL ACTION:
1. I move to approve Ordinance No. 3410 as presented.
2. I move to approve Ordinance No. 3410, with the following modifications…
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Ordinance No. 3410

ORDINANCE NO. 3410

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 22 "BUILDINGS AND BUILDING REGULATIONS" BY AMENDING ARTICLE VII.5 "FUEL GAS CODE" ADOPTING THE 2015 EDITION OF THE INTERNATIONAL FUEL GAS CODE WITH AMENDMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS ($2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known generally as the "International Codes"); and

WHEREAS, the City of Farmers Branch has been involved throughout the development process of the International Codes through participation with the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG); and

WHEREAS, the creation of the 2015 editions of the International Codes by the ICC was in conjunction with the International Conference of Building Officials (ICBO), the organization whose codes the City of Farmers Branch has adopted since the 1970s; and

WHEREAS, the International Codes have been reviewed by the NCTCOG and City staff; and

WHEREAS, the City's building and construction codes are intended to be updated periodically, with the 2012 editions of the International Codes being the most current published building and construction codes for which local amendments have been developed; and

WHEREAS, the City Council of the City of Farmers Branch has determined that it is in the best interest of the citizens of the City of Farmers Branch to adopt the 2015 editions of the International Codes, as stated herein, as the minimum standards for the construction, use, occupancy and maintenance of buildings and structures within the City limits, as set forth herein, and to adopt local amendments to said codes in order to account for unique local practices and/or conditions relating to the design and construction of structures within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Chapter 22 "Buildings and Building Regulations" of the Code of Ordinances of the City of Farmers Branch, Texas, is amended by amending Article VII.5 "Fuel Gas Code" to read as follows:

ARTICLE VII.5. FUEL GAS CODE

Sec. 22-230. Adoption of International Fuel Gas Code; purpose.

The 2015 Edition of the *International Fuel Gas Code*, as published by the International Code Council and as amended pursuant to Sec. 22-231, is hereby adopted. Copies of the Fuel Gas Code are on file in the office of the city secretary for permanent record and inspection and are incorporated into this section as if fully set forth herein. The chief building official, or his authorized representative, is hereby authorized and directed to enforce all provisions of the Fuel Gas Code. For purposes of this Article, the phrase "Fuel Gas Code" means collectively (i) the 2015 Edition of the *International Fuel Code*, as published by the International Code Council and (ii) the local amendments adopted pursuant to Sec. 22-231.

Sec. 22-231. Local Amendments to International Fuel Gas Code.

For purposes of enforcement of the provisions of the Fuel Gas Code within the incorporated limits of the City, the following sections, paragraphs, and sentences of the 2015 Edition of the *International Fuel Gas Code* are hereby amended as follows:

Section 102.2 is amended by adding a paragraph titled "Exception" to read as follows:

Exception: Existing dwelling units shall comply with Section 621.2.

Section 102.8 is amended to read as follows:

102.8 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 13 and such codes, when specifically adopted, and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference. Where the differences occur between provisions of this code and the referenced standards, the provisions of this code shall be the minimum requirements. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference to NFPA 70 or the ICC *Electrical Code* shall mean the Electrical Code as adopted.

Section 106.3.3 is amended to read as follows:

106.3.3 Plumbing License Required. All applications for plumbing permits must be made by a responsible master plumber who holds a valid registered license as a Master Plumber issued by the Texas State Plumbing Examiners Board. Plumbing contractors shall register their license with the City.

EXCEPTION: A property owner who is the current occupant of a homestead may apply for and obtain a permit to perform plumbing work on and for the said homestead, provided all work which is required to be performed by a licensed plumber is done by the property owner, all the work is performed in conformance with this code and no other City, County, State or Federal law is violated.

Section 106.6.2 is amended to read as follows:

106.6.2 Fee schedule. The fees for all plumbing work shall be as adopted by ordinance and/or resolution of the City Council.

Section 106.6.3 is amended to read in its entirety as follows:

106.6.3 Fee Refunds. The code official shall establish a policy for authorizing the refunding of fees.

Section 109.1 is amended to read as follows:

109.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals established by ordinance. The board shall be governed by the enabling ordinance.

109.1.1 Limitations of Authority. The board of appeals shall have no authority relative to interpretations of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.

Section 109.2 is amended to read as follows:

109.2 Appointment. The members of the Zoning Board of Adjustment of the City of Farmers Branch shall be appointed as the board of appeals.

Sections 109.2.5 through 109.7, inclusive, are deleted.

Section 304.10 is amended to read as follows:

304.10 Louvers and grilles. The required size of openings for combustion, ventilation and dilution air shall be based on the net free area of each opening. Where the free area through a design of louver, grille or screen is known, it shall be used in calculating the size opening required to provide the free area specified. Where the design and free area of louvers and grilles are not known, it shall be assumed that wood louvers will have 25-percent free area and metal louvers and grilles will have 50-percent free area. Screens shall have a mesh size not smaller than ¼ inch (6.4 mm). Nonmotorized louvers and grilles shall be fixed in the open position. Motorized louvers shall be interlocked with the appliance so that they are proven to be in the full open position prior to main burner ignition and during main burner operation. Means shall be provided to prevent the main burner from igniting if the louvers fail to open during burner start-up and to shut down the main burner if the louvers close during operation.

<u>Section 305.5 is deleted</u>.

<u>Section 306.3 is amended to read in its entirety as follows:</u>

[M] 306.3 Appliances in attics. Attics containing appliances shall be provided ... *{intervening language unchanged}* ... side of the *appliance*. The clear *access* opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), or larger where such dimensions are not large enough to allow removal of the largest *appliance*. A walkway to an appliance shall be rated as a floor as approved by the building official. As a minimum, for *access* to the attic space, provide one of the following:

1. A permanent stair.

2. A pull down stair with a minimum 300 lb (136 kg) capacity.

3. An *access* door from an upper floor level.

4. *Access* Panel may be used in lieu of items 1, 2, and 3 with prior approval of the code official due to building conditions.

   Exceptions:

   1. The passageway and level service space are not required where the *appliance* is capable of being serviced and removed through the required opening.

   2. Where the passageway is not less than … (*remainder of section unchanged}*.

<u>Section 306.5 is amended to read as follows:</u>

[M] 306.5 Equipment and appliances on roofs or elevated structures. Where *equipment* requiring *access* or appliances are located on an elevated structure or the roof of a building such that personnel will have to climb higher than 16 feet (4877 mm) above grade to access, a permanent interior or exterior means of access shall be provided. Permanent exterior ladders providing roof *access* need not extend closer than 12 feet (2438 mm) to the finish grade or floor level below and shall extend to the *equipment* and appliances' level service space. Such *access* shall . . . *{intervening language unchanged}*. . . on roofs having a slope greater than 4 units vertical in 12 units horizontal (33-percent slope). ... *{remainder of section unchanged}*.

<u>Section 306.5.1 is amended to read as follows:</u>

[M] 306.5.1 Sloped roofs. Where appliances, *equipment*, fans or other components that require service are installed on a roof having a slope 3 units vertical in 12 units horizontal (25 percent slope) or greater and having an edge more than 30 inches (762 mm) above grade at such edge, a catwalk at least 16 inches in width with substantial cleats spaced not more than 16 inches apart shall be provided from the roof *access* to a level platform at the appliance. The level platform

shall be provided on each side of the appliance to which *access* is required for service, repair or maintenance. The platform shall be not less than 30 inches (762 mm) in any dimension and shall be provided with guards. The guards shall extend not less than 42 inches (1067 mm) above the platform, shall be constructed so as to prevent the passage of a 21-inch-diameter (533 mm) sphere and shall comply with the loading requirements for guards specified in the *International Building Code*.

Section 306 is amended by adding Section 306.7 to read as follows:

306.7 Water heaters above ground or floor. When the attic, roof, mezzanine or platform in which a water heater is installed is more than eight (8) feet (2438 mm) above the ground or floor level, it shall be made accessible by a stairway or permanent ladder fastened to the building.

Section 401.5 is amended by adding the following language at the end of the section:

...Both ends of each section of medium pressure gas piping shall identify its operating gas pressure with an *approved* tag. The tags are to be composed of aluminum or stainless steel and the following wording shall be stamped into the tag:

"WARNING
1/2 to 5 psi gas pressure
Do Not Remove"

Section 402.3 is amended by adding the following paragraph titled "Exception":

Exception: Corrugated stainless steel tubing (CSST) shall be a minimum of 1/2" (18 EHD).

Section 404.12 is amended to read as follows:

404.12 Minimum burial depth. Underground piping systems shall be installed a minimum depth of 18 inches (458 mm) top of pipe below grade.

Section 406.1 is amended to read as follows:

406.1 General. Prior to acceptance and initial operation, all piping installations shall be inspected and pressure tested to determine that the materials, design, fabrication, and installation practices comply with the requirements of this code. The permit holder shall make the applicable tests prescribed in Sections 406.1.1 through 406.1.5 to determine compliance with the provisions of this code. The permit holder shall give reasonable advance notice to the code official when the piping system is ready for testing. The equipment, material, power and labor necessary for the inspections and test shall be furnished by the permit holder and the permit holder shall be responsible for determining that the work will withstand the test pressure prescribed in the following tests.

{all subsections remain unchanged}

Section 406.4 is amended to read as follows:

406.4 Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made.

Section 406.4.1 is amended to read in its entirety as follows:

406.4.1 Test pressure. The test pressure to be used shall be no less than 1 1/2 times the proposed maximum working pressure, but no less than 3 3 psig (20 kPa gauge), or at the discretion of the Code Official, the piping and valves may be tested at a pressure of at least six (6) inches (152 mm) of mercury, measured with a manometer or slope gauge, irrespective of design pressure. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe. For tests requiring a pressure of 3 psig, diaphragm gauges shall utilize a dial with a minimum diameter of three and one half inches (3 ½”), a set hand, 1/10 pound incrementation and pressure range not to exceed 6 psi for tests requiring a pressure of 3 psig. For tests requiring a pressure of 10 psig, diaphragm gauges shall utilize a dial with a minimum diameter of three and one-half inches (3 ½”), a set hand, a minimum of 2/10 pound incrementation and a pressure range not to exceed 20 psi. For welded piping, and for piping carrying gas at pressures in excess of fourteen (14) inches water column pressure (3.48 kPa) (1/2 psi) and less than 200 inches of water column pressure (52.2 kPa) (7.5 psi), the test pressure shall not be less than ten (10) pounds per square inch (69.6 kPa). For piping carrying gas at a pressure that exceeds 200 inches of water column (52.2 kPa) (7.5 psi), the test pressure shall be not less than one and one-half times the proposed maximum working pressure. Diaphragm gauges used for testing must display a current calibration and be in good working condition. The appropriate test must be applied to the diaphragm gauge used for testing.

Section 406.4.2, inclusive of subsections, is amended to read in its entirety as follows*:*

406.4.2 Test duration. Test duration shall be held for a length of time satisfactory to the Code Official, but in no case for less than fifteen (15) minutes. For welded piping, and for piping carrying gas at pressures in excess of fourteen (14) inches water column pressure (3.48 kPa), the test duration shall be held for a length of time satisfactory to the Code Official, but in no case for less than thirty (30) minutes.

Section 409.1 is amended by adding Section 409.1.4 to read as follows:

409.1.4 Valves in CSST installations. Shutoff valves installed with corrugated stainless steel (CSST) piping systems shall be supported with an *approved* termination fitting, or equivalent support, suitable for the size of the valves, of adequate strength and quality, and located at intervals so as to prevent or damp out excessive vibration but in no case greater than 12-inches from the center of the valve. Supports shall be installed so as not to interfere with the free expansion and contraction of the system's piping, fittings, and valves between anchors. All valves and supports

shall be designed and installed so they will not be disengaged by movement of the supporting piping.

Section 410.1 is amended by adding the following sentence at the end of the section and a new paragraph titled "Exception" to read as follows:

Access to regulators shall comply with the requirements for *access* to appliances as specified in Section 306.

> **Exception:** A passageway or level service space is not required when the regulator is capable of being serviced and removed through the required attic opening.

Section 621.2 is amended by adding a paragraph titled "Exception" to read as follows:

> **Exception:** Existing *approved* unvented heaters may continue to be used in dwelling units, in accordance with the code provisions in effect when installed, when *approved* by the Building Official unless an unsafe condition is determined to exist as described in Section 108.7.

SECTION 2. That all provisions of the Ordinances of the City of Farmers Branch, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. That any person violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmers Branch as heretofore amended and, upon conviction, shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000.00).

SECTION 6. This ordinance shall take effect on the first day of the calendar month following its passage in accordance with the provisions of the charter and state law.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE 13TH DAY OF DECEMBER, 2016.

ATTEST:	**APPROVED:**
_____	_____
Amy Piukana, City Secretary	Bob Phelps, Mayor

APPROVED AS TO FORM:

_____

Peter G. Smith, City Attorney
(kbl:11/18/16:81279)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3411

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Ordinance

Agenda Number: G.10

Consider adopting Ordinance No. 3411 approving the 2014 National Electric Code as amended; and take appropriate action.

BACKGROUND:
The City has been and is currently using the 2002 National Electric Code since March of 2002. Model construction codes such as the NEC are updated and re-published on a three year cycle. Staff is recommending updating to the most current edition, the 2014 National Electric Code. There are too many changes to list when jumping four cycles (12 years), however some notable changes to the 2014 NEC are new marking requirements for electrical equipment, providing dedicated space above and below outdoor electrical equipment, expanding the requirements for GFCI and AFCI protection and simplifying the rules for sizing conductors. The main reason the City was under the 2002 NEC for such a long duration is primarily due to the delay of the NCTCOG in getting regional amendments created and published. Currently, all of our neighboring municipalities have adopted and are enforcing the 2014 NEC.

RECOMMENDATION:
City Administration recommends approval of Ordinance No. 3411, as presented.

POSSIBLE COUNCIL ACTION:
1. I move to approve Ordinance No. 3411, as presented.
2. I move to approve Ordinance No. 3411, with the following modifications…
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Ordinance No. 3411

ORDINANCE NO. 3411

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING CODE OF ORDINANCES CHAPTER 22 "BUILDINGS AND BUILDING REGULATIONS," ARTICLE IV "ELECTRICAL STANDARDS" ADOPTING THE 2014 EDITION OF THE NATIONAL ELECTRICAL CODE AND ADOPTING LOCAL AMENDMENT THERETO; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS ($2,000.00) FOR EACH OFFENSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INJUNCTIVE RELIEF; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known generally as the "International Codes"); and

WHEREAS, the City of Farmers Branch has been involved throughout the development process of the International Codes, through participation with the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG); and

WHEREAS, the National Electrical Code prepared by the National Fire Protection Association and the International Codes were prepared by the International Code Council, have been reviewed by the NCTCOG, and in addition have been reviewed by City staff; and

WHEREAS, the City's building and construction codes are intended to be updated periodically, and the 2014 edition of the National Electrical Code is the most current published electrical code at this time; and

WHEREAS, the City Council of the City of Farmers Branch has determined that it is in the best interest of the citizens of the City of Farmers Branch to update and adopt the 2014 edition of the National Electrical Code, as stated herein, as the minimum standards for the construction, use, occupancy and maintenance of buildings and structures within the City limits, as set forth herein and as those codes are specifically modified by this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS:

SECTION 2. The Code of Ordinances of the City of Farmers Branch, Chapter 22 "Building and Building Regulations", Article IV "Electrical Standards" is amended in its entirety to read as follows:

ARTICLE IV. - ELECTRICAL STANDARDS

Sec. 22-121. - Adoption of National Electrical Code; purpose

The 2014 Edition of the National Electrical Code, as published by the National Fire Protection Association and as amended pursuant to Sec. 22-122, is hereby adopted. Copies of the Electrical Code are on file in the office of the city secretary for permanent record and inspection and are incorporated into this section as if fully set forth herein. The chief building official, or his authorized representative, is hereby authorized and directed to enforce all provisions of the Electrical Code. For purposes of this Article, the phrase "Electrical Code" means collectively (i) the 2014 Edition of the National Electrical Code, as published by the National Fire Protection Association and (ii) the local amendments adopted pursuant to Sec. 22-122.

Sec. 22-122. - Local Amendments Adopted

For purposes of enforcement of the provisions of the Electrical Code within the incorporated limits of the City, the following sections, paragraphs, and sentences of the Electrical Code are hereby amended as follows:

<u>Amend Article 80 titled "Administration" to read as follows:</u>

ARTICLE 80 - ADMINISTRATION

Article 80-1. Conflicting Provisions. Where, in any specific case, different sections of this Code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

Article 80-2. Application to Existing Electrical Systems and Equipment.

(A) Additions, Alterations or Repairs. Additions, alterations or repairs may be made to any electrical system and equipment without requiring the existing electrical system and equipment to comply with all the requirements of this Code, provided that addition, alteration or repair conforms to that required for a new electrical system and equipment and provided further that no hazard to life, health or safety will be created by such additions, alterations or repairs.

(B) Existing Installations. Electrical systems and equipment lawfully in existence at the time of the adoption of this Code may have their use, maintenance or repair continued if the use, maintenance or repair is in accordance with the original design and no hazard to life, health or property has been created by such electrical system and equipment.

(C) Changes in Building Occupancy. Electrical systems and equipment which are a part of any building or structure undergoing a change in use or occupancy, as defined in the Building Code, shall comply with the requirements of this Code which are applicable to the new use or occupancy.

(D) Maintenance. All electrical systems and equipment, both existing and new, and all parts thereof shall be maintained in a proper operating condition in accordance with the original design and in a safe and hazard free condition. All devices or safeguards which are required by this Code

shall be maintained in conformance with this Code. The owner or his designated agent shall be responsible for the maintenance of the electrical system. To determine compliance with this subsection, the Building Official may cause any electrical system to be reinspected.

(E) Moved Building. Electrical systems and equipment which are a part of buildings or structures moved into or within the City shall comply with the provisions of this Code for new installations.

Article 80-3. Unsafe Electrical Systems or Equipment.

(A) Unsafe Electrical Systems or Equipment. All electrical systems or equipment regulated by this Code which are unsafe, or which constitute a fire hazard, or are otherwise dangerous to human life, for the purpose of this section, shall be considered unsafe. Any use of electrical systems or equipment regulated by this Code constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is, for the purpose of this section, an unsafe use.

All such unsafe electrical systems or equipment are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in the Minimum Housing Code and the Property Maintenance Code of the City of Farmers Branch or such alternate procedure as may be adopted by this jurisdiction. As an alternative, the Building Official or other employee or official of the City as designated by the City Manager may institute any other appropriate action to prevent, restrain, correct or abate the violation.

Article 80-4. Violations and Penalties

(A) Violations. It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, improve, remove, convert, or demolish, equip, use or maintain mechanical systems or equipment or cause or permit the same to be done in violation of this code.

(B) Penalties. Any person, firm, organization or corporation violating any of the provisions of this code or any amendment thereto shall be deemed guilty of a misdemeanor, and upon conviction in Municipal Court shall be subject to a fine not to exceed the sum of two thousand dollars ($2,000) for each offense, and each and every day such violation continues shall constitute a separate offense.

Article 80-5. Organization and Enforcement

(A) Powers and Duties of Building Official. The Building Official is hereby authorized to enforce all the provisions of this code. He shall cause a record to be kept of all permits issued and inspections made.

(B) Deputies. In accordance with prescribed procedures and with the approval of the appointing authority, the Building Official may appoint a chief electrical inspector and other related technical officers and inspectors and other employees as shall be authorized from time to time. It shall be

unlawful for any person to hinder or interfere with the electrical inspector or any of his assistants in the discharge of their duties.

It shall be unlawful for the chief electrical inspector or any electrical inspector to engage in the business of selling, installing, or maintenance of electrical fixtures, devices, equipment or materials, and they shall have no financial interest in any concern engaged in such business at any time while employed by the enforcement agency of the City.

(C) Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this Code, or whenever the Building Official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or violation which makes such building or premises unsafe, dangerous or hazardous, the Building Official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Building Official by such Codes, provided that if such building or premises be occupied, he shall first present proper credentials and request entry. If such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry be refused, the Building Official or his authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Building Official or his authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Building Official or his authorized representative for the purpose of inspection and examination pursuant to this Code.

(D) Notice. When any order or notice is issued pursuant to the provisions of this Code to any person who cannot be found after a reasonable search, such order or notice may be served by posting it in a conspicuous place upon the premises occupied by him or upon the premises where the defects are alleged to exist. Such posting of the notice shall be considered equivalent to personal service of such order or notice. An order sent by mail in a sealed envelope with postage prepaid and directed to the address of the electrical contractor, owner, leaseholder, or occupant of the premises shall be equivalent to personal service of such order.

Electrical inspectors are hereby empowered to attach to the nearest electrical cabinet or equipment feeding defective or hazardous wiring, any official notice or seal to prevent use of electricity in that area, and it shall be unlawful for any other person to place or attach such seal, or to break, change, destroy, tear, mutilate, cover or otherwise deface or injure any such official notice or seal posted by an electrical inspector.

(E) Stop Orders. Whenever any work is being done contrary to the provisions of this Code, the Building Official may order the work stopped by notice in writing served on any persons engaged in doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Building Official to proceed with the work.

(F) Authority to Disconnect Utilities in Emergencies. The Building Official or his authorized representative shall have the authority to disconnect any electrical power or energy service supplied to the building, structure or building service equipment therein regulated by this Code in case of emergency where necessary to eliminate an immediate hazard to life or property. The Building Official shall, whenever possible, notify the serving utility, the owner and occupant of the building, structure or building service equipment, in writing, of such disconnection immediately thereafter.

(G) Authority to Condemn Electrical System and Equipment. Whenever the Building Official ascertains that any electrical system or equipment regulated in this Code has become hazardous to life, health or property, he may order in writing that such electrical system or equipment either be removed or restored to a safe condition, whichever is appropriate. The written notice itself shall fix a time limit for compliance with such order. No person shall use or maintain a defective *electrical* system or equipment after receiving such notice.

When such equipment or installation is to be disconnected, a written notice of such disconnection and causes therefore shall be given within 24 hours of the order to disconnect to the serving utility, the owner and occupant of such building, structure or premises.

When an electrical system or equipment is maintained in violation of this Code and in violation of any notice issued pursuant to the provisions of this section, the Building Official shall institute any appropriate action to prevent, restrain, correct or abate the violation.

(H) Connection after Order to Disconnect. No person shall make connections from any energy or power supply nor supply power to any electrical system or equipment which has been disconnected or ordered to be disconnected by the Building Official or the use of which has been ordered to be discontinued by the Building Official until the Building Official authorizes the reconnection and use of such electrical system or equipment.

(I) Liability. The Building Official, or his authorized representative charged with the enforcement of this Code, acting in good faith and without malice in the discharge of his duties, shall not thereby render himself personally liable for any damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of his duties.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any property within the City for any damages to persons or property caused by defects, nor shall the Code enforcement agency or its parent jurisdiction be held as assuming any such liability by reason of the inspections authorized by the Code or approvals issued under this Code.

(J) Cooperation of Other Officials and Officers. The Building Official may request, and shall receive so far as is required in the discharge of his duties, the assistance and cooperation of other officials of this jurisdiction.

Article 80-6 - Board of Appeals

(A) General. In order to hear and decide appeals of orders, decisions or determinations made by the Building Official relative to the application, and interpretation of this code, there shall be and is hereby created a board of appeals consisting of members who are not employees of the jurisdiction. The Building Official shall be an ex-officio member of and shall act as secretary to said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the Building Official.

(B) Limitations of Authority. The board of appeals shall have no authority relative to interpretation of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.

(C) Appointment. The members of the City of Farmers Branch Zoning Board of Adjustment shall be the City of Farmers Branch Board of Appeals.

Article 80-7. Permits.

(A) Permits Required. Except as specified in Subsection (c) of this article, no electrical system regulated by this Code shall be installed, altered, repaired, replaced or remodeled unless a separate electrical permit for each building or structure has first been obtained from the Building Official. It shall be unlawful for any person, firm or corporation who is not registered by the city as an electrical contractor to secure permits except as provided in Article 80-10(p) 5 & 6.

(B) Transfer of Permits. It shall be unlawful for any person to lend, rent, or transfer an electrical permit or permit a person without proper license or registration to do work, or for any person to make use of any such permit or affidavit which is not actually his own, and any such permit obtained or affidavit submitted under these conditions shall be null and void.

(C) Exempt Work. An electrical permit shall not be required for the following:

1. Portable motors or other portable appliances energized by means of a cord or cable having an attachment plug end to be connected to an approved receptacle when that cord or cable is permitted by this Code.

2. Repair or replacement of fixed motors, transformers or fixed approved appliances of the same type and rating in the same location.

3. Temporary decorative lighting.

4. Repair or replacement of current-carrying parts of any switch, contactor or control device.

5. Reinstallation of attachment plug receptacles, but not the outlets therefore.

6. Repair or replacement of any overcurrent device of the required capacity in the same location.

7. Repair or replacement of electrodes or transformers of the same size and capacity for signs or gas tube systems.

8. Taping joints.

9. Removal of electrical wiring.

10. Temporary wiring for experimental purposes in suitable experimental laboratories.

11. The wiring for temporary theater, motion picture or television stage sets.

12. Electrical wiring, devices, appliances, apparatus or equipment operating at less than 25 volts and not capable of supplying more than 50 watts of energy.

13. Low-energy power, control and signal circuits of Classes II and III as defined in this Code.

14. A permit shall not be required for the installation, alteration or repair of electrical wiring apparatus or equipment or the generation, transmission, distribution or metering of electrical energy or in the operation of signals or the transmission of the intelligence by a public or private utility in the exercise of its function as a serving utility.

Exemption from the permit requirements of this Code shall not be deemed to grant authorization for any work to be done in violation of the provisions of this Code or any other laws or ordinances.

(D) Application for Permit. To obtain a permit, the applicant shall first file an application in writing on a form furnished by the Code enforcement agency for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. Be accompanied by plans, diagrams, computations and specifications and other data as required in subsection (e) of this article.

4. Be signed by permittee, or his authorized agent.

5. Give such other data and information as may be required by the Building Official.

(E) Plans and specifications. Plans, engineering calculations, diagrams and other data shall be submitted in one or more sets with each application for a permit. The Building Official may require

plans, computations and specifications to be prepared and designed by an engineer or architect licensed by the state to practice as such. If the Building Official finds that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this Code, then the Building Official may waive the submission of plans, engineering calculations, diagrams and data, or portions thereof.

(F) Information on plans and specifications. Plans and specifications shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the location, nature and extent of work proposed and show in detail that it will conform to the provisions of this Code and all relevant laws, ordinances, rules and regulations.

Plans for buildings more than two stories in height of other than Groups R, Division 3 and U Occupancies shall indicate how required structural and fire-resistive integrity will be maintained where a penetration will be made for electrical and communication conduits, pipes and similar systems.

(G) Permits Issuance. The applications, plans and specifications, and other data, filed by an applicant for permit may be reviewed by other departments of the City to determine compliance with any applicable laws under their jurisdiction. If the work described in an application for a permit and the plans, specifications and other data filed therewith conforms to the requirements of this Code and other pertinent laws and ordinances, and the fees specified have been paid, the Building Official shall issue a permit therefore to the applicant.

When the Building Official issues the permit where plans are required, he shall endorse in writing or stamp the plans and specifications "APPROVED". Such approved plans and specifications shall not be changed, modified or altered without authorizations from the Building Official, and all work shall be done in accordance with the approved plans.

The Building Official may issue a permit for the construction of part of an electrical system before the entire plans and specifications for the whole system have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this Code. The holder of such permit shall proceed at his own risk without assurance that the permit for the entire building, structure or building service will be granted.

(H) Retention of plans. One set of approved plans and specifications shall be returned to the applicant and shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress. One set of approved plans, specifications and computations shall be retained by the Building Official until final approval of the work.

(I) Validity of permit. The issuance of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Code, or of any other ordinance of the City, nor shall the issuance of a permit or approval of plans be construed as representing or warranting the safety or lack of defects of any electrical work described therein. No permit presuming to give authority to violate or cancel the provisions of these Codes shall be valid.

The issuance of a permit based upon plans, specifications and other data shall not prevent the Building Official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on there under when in violation of these Codes or of any other ordinances of the City.

(J) Expiration. Every permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days or more. Before such work can be recommenced, a new permit shall be first obtained and the fee therefore shall be one-half the amount required for the original permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after one year, the permittee shall pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which he may commence work under that permit when he is unable to commence work within the time required by this article for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

(K) Suspension or Revocation. The Building Official may, in writing, suspend or revoke a permit issued under the provisions of this Code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation of the City.

(I) Permit Fees. The fee for each electrical permit shall be as set forth in the Fee Schedules of the City of Farmers Branch. A fee equal to twice the normal fee may be assessed on all work commenced prior to obtaining a required permit.

Article 80-8 Inspections.

(A) General. All electrical systems and equipment for which a permit is required by this Code shall be subject to inspection by the Building Official. No portion of any electrical system intended to be concealed shall be concealed until inspected and approved. Neither the Building Official nor the City shall be liable for expense entailed in the removal or replacement of any material necessary to allow inspection. When the installation of an electrical system and equipment is complete, an additional and final inspection shall be made. Electrical systems and equipment regulated by this Code shall not be connected to the energy source until authorized by the Building Official.

(B) Inspection requests. It shall be the duty of the person doing the work authorized by a permit to notify the Building Official that such work is ready for inspection. The Building Official may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be in writing or by telephone at the option of the Building Official.

It shall be the duty of the person requesting inspections required by this Code to provide access to and means for proper inspection of such work.

(C) Operation of electrical equipment. The requirements of this article shall not be construed to prohibit the operation of any electrical system or equipment installed to replace existing equipment. The request for inspection of such equipment must have been filed with the Building Official not more than 48 hours after such replacement work is completed and before any portion of such electrical system is concealed by any permanent portion of the building.

(D) Other inspections. In addition to the inspections required by this Code, the Building Official may make or require other inspections of any work to ascertain compliance with the provisions of this Code and other laws which are enforced by the Code enforcement agency.

(E) Reinspection. A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is requested is not complete or when required corrections are not made.

This provision is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of this Code, but as controlling the practice of calling for inspections before the job is ready for such inspection or reinspection or when required corrections are not made.

Reinspection fees may be assessed when the approved plans are not readily available to the inspector, for failure to provide access on the date for which inspection is requested, or for deviating from plans requiring the approval of the Building Official.

To obtain a reinspection, the applicant shall pay the reinspection fee in accordance with The Fee Schedules of the City of Farmers Branch.

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

Article 80-9 Connection Approval

(A) Energy Connections. An electrical system or equipment regulated by this Code for which a permit is required shall not be connected to a source of energy or power until approved by the Building Official.

(B) Temporary connections. The Building Official may authorize the temporary connection of the electrical system or equipment to the source of energy or power for the purpose of testing the equipment, or for the use under a temporary Certificate of Occupancy.

All temporary electrical services must be granted for a specified time limit only, and upon expiration of the original time limit, may be renewed when, in the opinion of the Building Official, it is justifiable. Temporary electrical service permits shall in no case exceed 30 days per permit.

The Building Official shall have the right to specify any conditions which must be met prior to releasing temporary electrical service.

Temporary electrical services released for buildings where work is in progress and has not been approved on final inspection shall require the owner or owner's agent for such building to file application for temporary electrical service with the Building Official. Such application shall contain a "hold harmless agreement", as well as any other information which may be required by the Building Official.

Article 80-10 License and Registration

Method of Registration of Electrical Contractor or Plant Licensee.

(A) Registration. To register with the City as an electrical contractor or plant licensee, application shall be made in writing on forms furnished for that purpose and filed with the chief electrical inspector. The application shall show the electrical contractor's name, local address and telephone number, and such other information as may reasonably be required to properly identify the electrical contractor or applicant for a plant license.

(B) Plant License. Work done under a plant license shall be restricted to the building owned and leased and occupied by the plant licensee and so designated on the license application. Such work shall be subject to all requirements for permits, supervision and inspection, the same as if performed by an electrical contractor.

(C) False Representation. It shall be unlawful for any person, firm, or corporation to falsely represent himself or themselves as a registered and licensed electrician, or to use falsely the words "electrical contractor", "master electrician", "journeyman electrician", or words of similar import or meanings, on signs, cards, stationery, or by other misleading manner whatsoever within the City, unless said person, firm, or corporation is in fact, registered and holds a valid license within the meaning of the words used and as provided in this Code.

(D) Transfer of License. It shall be unlawful for any person to lend, rent or transfer his certificate of license or any rights therein contained to any other person, and for any person to make use of any such rights which are not actually his own. It shall be unlawful for any person other than the Building Official or his deputies to alter or amend in any manner any such certificate of licensing.

(E) Supervision. The actual work of installing, altering, or repairing of electrical work for which a permit is required by this Code shall have supervision by a licensed master electrician as provided by this Code. There shall be a licensed electrician present on the job site at all times during the installation, alteration or repair of electrical equipment or wiring.

In the event the owner of an electrical contracting business is not a licensed master electrician, a master electrician shall be designated by the owner of such place of business to the chief electrical inspector as the person responsible for, and supervising, the electrical work done by such electrical contractor. Such designated master electrician shall be the supervisory

electrician for only one (1) electrical contractor within the city at any one time. Should such supervision not be constantly provided, the electrical inspector may order the work being done by such electrical contractor to be discontinued until proper supervision and control has been provided and the name of the new master electrician disclosed to the chief electrical inspector.

(F) License Required. It shall be unlawful for any person, except those exempt by this Code, who is not licensed as an electrician in accordance with the provisions of this chapter, to install electrical work or supervise electrical work as defined herein.

Nothing herein shall be construed as prohibiting the employment of a journeyman electrician to engage in, and work at the actual installation, alteration, repairing and renovating of electrical work, or the employment of an electrician's apprentice who, as his principal occupation, is engaged in the learning and assisting in the installation of electrical work, or the employment of unskilled laborers to handle, hand or carry materials when working under the immediate supervision of a master electrician or journeyman electrician.

(G) Classifications. Electrical licenses shall be in the classifications listed below:

1. Electrical contractor

2. Master electrician

3. Journeyman electrician

4. Plant electrician

A person registered in one of these classifications shall be permitted to perform the work of that classification as herein defined.

(H) Licensing of Master Electrician. An applicant for licensing as a master electrician shall be not less than twenty-one (21) years of age, shall have had at least five (5) years' experience in the installation, alteration, repair, and maintenance of electrical conductors, equipment and apparatus, or an experience equivalent thereto. He shall furnish the names and addresses of former employers, period of time employed and in what capacity and provide documentation that he has passed examination for master electrician, is in good standing with an organization or municipality that has a reciprocal agreement with the City. Said documentation shall provide proof that he has the necessary qualifications to install or direct the installation of electrical conductors, devices, apparatus and equipment as a master electrician.

It shall be unlawful for any master electrician to permit his name to be used, or to knowingly permit himself to be held out as the officer or employee in a supervisory capacity of any individual person, firm or corporation holding an electrical contractor's certificate unless he is, in fact, an officer or employee and does, in fact, supervise the installation of electrical work performed by such person or company.

(I) Licensing of Journeyman Electrician. An applicant for licensing as a journeyman electrician shall be not less than twenty (20) years of age and shall have had at least four (4) years' experience in the installation, alteration, repair, and maintenance of electrical conductors and equipment or an equivalent experience thereto and provide documentation that he has passed examination for a journeyman electrician and is in good standing with an organization or municipality that has a reciprocal agreement with the City. Said documentation shall provide proof that he has the necessary qualifications to install or direct the installation of electrical conductors, devices, apparatus and equipment as a journeyman electrician.

A journeyman electrician license shall entitle the holder thereof to engage himself in the employ of any person, firm or corporation registered under the provisions of this Code. A registration card shall be issued to each licensed journeyman electrician.

(J) Licensing of Plant Electrician. Applicants shall have a valid master electrical license, but shall additionally be required to designate an address to be authorized as the "Plant" in which work under such license is to be done. They shall further be required to show proof of ownership or leasing agreement for such property. If leasing, they shall further be required to show permission from the property owner authorizing the lessee to perform electrical work within or on such property.

(K) Fees. The annual fees for licensing of qualified electricians shall be payable to the city, as set out in the Fee Schedules of the City of Farmers Branch. The year for payments of fees shall begin on January 1st and end December 31st of the same year.

(L) Renewal of License. Every license provided for in this code shall expire at midnight on December 31st, following the date of its issuance, and shall be renewed by the chief electrical inspector upon application and upon the payment to the City of the required annual fee.

(M) Suspension or Revocation of License. Upon presentation to the Building Official or his deputy of charges that the holder of any license has willfully or persistently violated any provisions of this code or is unable to comply with such provisions, or such person, firm or corporation has been found guilty of violating any such requirements of this code, the board of appeals is to consider such charges and shall notify the holder of the license to be present at such meeting. Such notification shall be in writing and shall be delivered to the holder at least fifteen (15) days in advance of the meeting.

If, upon a hearing by the board of all evidence offered, it shall be decided by the board that the holder of a license has willfully or persistently violated any of the provisions of such ordinances, or has proved himself unable to comply with such provisions, then the Building Official or his deputy may, upon the recommendation of the board, suspend or revoke the rights conveyed by the license for a period of not less than thirty (30) days and not more than two (2) years.

(N) Display of License. Each holder of a master or journeyman license shall carry evidence of proper license on his person at all times while doing electrical work and shall produce and exhibit same when requested by an inspector or officer of the City.

(O) Recognition of Licenses from Other Cities. Electricians holding a currently valid license in another city may apply for and receive a similar license in this city without taking an examination, provided the following conditions are complied with:

1. He shall submit evidence satisfactory that his license was issued under conditions not less restrictive than required by this code for issuance of a license, and that city or organization where the license was issued has a reciprocal agreement with the City of Farmers Branch.

2. He shall pay the registration fee required and comply with all other requirements of this Code.

(P) Exception from Licensing and Registration. The following classes of work may be carried out by persons who are not registered electricians:

1. The replacement of lamps, fuses and the cord and plug connection of portable devices.

2. The installation, alteration, or repairing of any wiring, devices, or equipment for signaling, remote control, or the transmission of information, provided such are inherently power limited and have a maximum nameplate rating not exceeding one volt-ampere.

3. The installation, alteration or repair of the electric wiring, devices, appliances and equipment installed by or for an electrical public service corporation legally operating in the city when for the use of such corporation in the generation, transmission, distribution or metering of the electrical energy or for the use of such a corporation in the operation of street or railway signals or the transmission of information.

4. Any work involved in the manufacture or test of electrical materials, devices, appliances or apparatus, but not including any installation of wiring other than that required for testing purposes unless such equipment as complete is approved by the chief electrical inspector before it is installed or used.

5. A property owner who is the current occupant of homestead may apply for and obtain a permit to perform electrical work on and for said homestead, provided all work which is normally required to be performed by a licensed person is performed by the property owner, all the work is performed in conformance with this code and no other City, County, State or Federal law is violated.

6. Electrical permits to do work for the City on City property may be obtained by persons licensed in the City as journeyman electricians when in full time employ of the City. Such permits shall be subject to inspections and all other requirements of this Code, except that permit fees shall be waived. Such permit applications shall be signed by the journeyman and his Department Head.

Article 100, Part I is amended by amending the definitions of "Engineering Supervision" to read as follows:

Engineering Supervision. Supervision by a Qualified State of Texas Licensed Professional Engineer engaged primarily in the design or maintenance of electrical installations.

Article 110.2 is amended to read as follows:

110.2 Approval. The conductors and equipment required or permitted by this *Code* shall be acceptable only if approved. Approval of equipment may be evident by listing and labeling of equipment by a Nationally Recognized Testing Lab (NRTL) with a certification mark of that laboratory or a qualified third party inspection agency approved by the AHJ.

Exception: Unlisted equipment that is relocated to another location within a jurisdiction or is field modified is subject to the approval by the AHJ. This approval may be by a field evaluation by a NRTL or qualified third party inspection agency approved by the AHJ.

> Informational Note No.1: See 90.7, Examination of Equipment for Safety, and 110.3, Examination, Identification, Installation, and Use of Equipment. See definitions of *Approved*, *Identified*, *Labeled*, and *Listed*.
>
> Informational Note No. 2: Manufacturer's self-certification of equipment may not necessarily comply with US product safety standards as certified by a Nationally Recognized Testing Lab.
>
> Informational Note No. 3: NFPA 790 and 791 provide an example of an approved method for qualifying a third party inspection agency.

Article 210.52(G)(1) is amended to read as follows:

(1) Garages. In each attached garage and in each detached garage with electric power. At least one receptacle outlet shall be installed for each car space.

Article 230.71(A) is amended by adding the following paragraph titled "Exception":

Exception: Multi-occupant buildings. Individual service disconnecting means is limited to six for each occupant. The number of individual disconnects at one location may exceed six.

Article 240.91 is deleted.

Article 300.11 is amended by adding the following paragraph titled "Exception":

Exception: Ceiling grid support wires may be used for structural supports when the associated wiring is located in that area, not more than two raceways or cables supported per wire, with a maximum nominal metric designation 16 (trade size 1/2").

Article 310.15(B)(7) is amended to read as follows:

(7) This Article shall not be used in conjunction with 220.82.

Article 500.8(A)(3) is amended to read as follows:

(3) Evidence acceptable to the authority having jurisdiction such as a manufacturer's self-evaluation or an engineering judgment signed and sealed by a qualified licensed Professional Engineer in the State of Texas.

Article 505.7(A) is amended to read as follows*:*

(A) Implementation of Zone Classification System. Classification of areas, engineering and design, selection of equipment and wiring methods, installation, and inspection shall be performed by a qualified Licensed Professional Engineer in the State of Texas.

Article 517.30(G) is amended to read as follows:

(G) Coordination. Overcurrent protective devices serving the equipment branch of the essential electrical system shall be coordinated for the period of time that a fault's duration extends beyond 0.1 second.

Exception No. 1: Between transformer primary and secondary overcurrent protective devices, where only one overcurrent protective device or set of overcurrent protective devices exists on the transformer secondary.

Exception No. 2: Between overcurrent protective devices of the same size (ampere rating) in series.

Informational Note: The terms coordination and coordinated as used in this section do not cover the full range of overcurrent conditions.

Article 517.30 is amended by adding a new Paragraph (H) to read as follows:

(H) Selective Coordination. Overcurrent protective devices serving the life safety, and critical branches of the essential electrical system shall be selectively coordinated with all supply-side overcurrent protective devices.

Exception No. 1: Between transformer primary and secondary overcurrent protective devices, where only one overcurrent protective device or set of overcurrent protective devices exists on the transformer secondary.

Exception No. 2: Between overcurrent protective devices of the same size (ampere rating) in series.

Informational Note: The terms coordination and coordinated as used in this section do not cover the full range of overcurrent conditions.

<u>Article 680.25(A) is amended to read as follows:</u>

680.25 Feeders. These provisions shall apply to any feeder on the supply side of panelboards supplying branch circuits for pool equipment covered in Part II of this article and on the load side of the service equipment or the source of a separately derived system.

(A) Wiring Methods.

(1) Feeders. Feeders shall be installed in rigid metal conduit or intermediate metal conduit. The following wiring methods shall be permitted if not subject to physical damage:

(1) Liquidtight flexible nonmetallic conduit

(2) Rigid polyvinyl chloride conduit

(3) Reinforced thermosetting resin conduit

(4) Electrical metallic tubing where installed on or within a building

(5) Electrical nonmetallic tubing where installed within a building

(6) Type MC cable where installed within a building and if not subject to corrosive environment

(7) Nonmetallic-sheathed cable

(8) Type SE cable

SECTION 2. Except as provided in Section 1 of this Ordinance, all provisions of the Ordinances of the City of Farmers Branch, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinance as a whole.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000)

for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense as set forth in Section 1-14 of the Code of Ordinances.

SECTION 6. This ordinance shall take effect on the first day of the calendar month following its passage and publication in accordance with the provisions of the charter and state law.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THIS THE 13TH DAY OF NOVEM BER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM

_____
Peter G. Smith, City Attorney
(kbl:11/18/16:81269)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3414

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Ordinance

Agenda Number: G.11

Consider adopting Ordinance No. 3414 amending Chapter 38 titled "Fire Prevention and Protection" of the Code of Ordinances by adopting the provisions of the 2015 edition of the International Fire Code with amendments and take appropriate action.

BACKGROUND:
To insure that structures in the City of Farmers Branch are built and maintained to a minimum standard for fire safety, the City adopts a model fire code. The North Central Texas Council of Governments (NTCCOG) sponsors a review of the most current fire codes and recommends adoption of the code with regional amendments to address regional conditions. These amendments are intended to regionalize code adoptions and promote enforcement of the same set of minimum standards in the region. Model codes are updated on a routine basis through an international governmental consensus process.

The City of Farmers Branch routinely adopts updated versions of model construction codes to insure that structures meet minimum standard for health and safety. Currently the City of Farmers Branch is enforcing the 2012 International Fire Code. The ordinance as proposed will adopt the 2015 International Fire Code with minimal amendments to address local issues.

Some notable changes to the local amendments is to allow dispensing of Class I motor vehicle fuel from tank vehicles into the fuel tanks of motor vehicles located in open areas at commercial, industrial, governmental or manufacturing establishments as allowed by permit. This language is proposed for the 2018 International Fire Code. Neighboring cities currently allow this process. Another notable change to the 2015 International Fire Code Appendix to require retroactive automatic sprinkler requirements for High-Rise Buildings. This amendment will only impact one high-rise and the compliance schedule shall not exceed 12 years for an automatic sprinkler system retrofit.

RECOMMENDATION:
City Administration recommends adopting Ordinance No. 3414 amending Chapter 38 titled "Fire Prevention and Protection" of the Code of Ordinances by adopting the provisions of the 2015 edition of the International Fire Code with amendments.

ACTIONS:
1) Motion to adopt Ordinance No. 3414 amending Chapter 38 titled "Fire Prevention and

Protection" of the Code of Ordinances by adopting the provisions of the 2015 edition of the International Fire Code with amendments.

2) Motion to deny Ordinance No. 3414 amending Chapter 38 titled "Fire Prevention and Protection" of the Code of Ordinances by adopting the provisions of the 2015 edition of the International Fire Code with amendments.
3) Motion to modify to meet the needs of the Council.
4) Motion to table the issue for further study or take no action.

ATTACHMENTS:

1. Ordinance No. 3414

ORDINANCE NO. 3414

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 38 TITLED "FIRE PREVENTION AND PROTECTION" BY AMENDING ARTICLE II TITLED "FIRE CODE" TO ADOPT THE PROVISIONS OF THE 2015 EDITION OF THE INTERNATIONAL FIRE CODE WITH AMENDMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS ($2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known generally as the "International Codes"); and

WHEREAS, the City of Farmers Branch has been involved throughout the development process of the International Codes, through participation with the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG); and

WHEREAS, the creation of the 2015 editions of the International Codes by the ICC was in conjunction with the International Conference of Building Officials (ICBO), the organization whose codes the City of Farmers Branch has adopted since the 1970s; and

WHEREAS, the International Codes have been reviewed by the NCTCOG and City staff; and

WHEREAS, the City's building and construction codes are intended to be updated periodically, with the 2015 editions of the International Codes being the most current published building and construction codes for which local amendments have been developed; and

WHEREAS, the City Council of the City of Farmers Branch has determined that it is in the best interest of the citizens of the City of Farmers Branch to adopt the 2015 editions of the International Codes, as stated herein, as the minimum standards for the construction, use, occupancy and maintenance of buildings and structures within the City limits, as set forth herein, and to adopt local amendments to said codes in order to account for unique local practices and/or conditions relating to the design and construction of structures within the City;

SECTION 1. Chapter 38 titled "Fire Prevention and Protection" of the Code of Ordinances of the City of Farmers Branch, Texas, is amended by amending Article II titled "Fire Code" to read in its entirety as follows:

ARTICLE II. FIRE CODE

Sec. 38-36. Adoption of International Fire Code; purpose.

There is hereby adopted by the City of Farmers Branch, Texas for the purpose of establishing rules and regulations for the design, quality of materials, erection, construction, installation, alteration, repair, location, relocation, replacement, conversion, addition to, moving, removal, demolition, occupancy, equipment, use, height, area and maintenance of all building or structures, the 2015 International Fire Code, published by the International Code Council; with the exception of such sections thereof as are hereafter deleted, modified or amended by this Ordinance, and the same are hereby adopted and incorporated herein, the same as if entirely set out at length herein, and from the date of which this Ordinance shall take effect, the provisions hereof shall be controlling within the corporate limits of the City of Farmers Branch, Texas. This code shall be known as the "Fire Code" or the "Farmers Branch Fire Code".

Sec. 38-37 Definitions

The following words and phrases shall have the following meanings wherever they appear in the Fire Code:

(a) “Building Official” means the Building Official of the City of Farmers Branch, Texas.

(b) “Bureau of Fire Prevention” means the Fire Department of the City of Farmers Branch, Texas.

(c) “Chief of the Bureau of Fire Prevention” or word “Chief” mean the Fire Chief of the City of Farmers Branch, Texas or the Chief’s authorized representative.

(d) “City” means the City of Farmers Branch, Texas.

(e) “Corporate counsel” means the City Attorney and any assistance city attorney for the City of Farmers Branch, Texas.

(f) “Fleet vehicle” means a motor vehicle which is one of a group of motor vehicles, owned or operated as a unit and used in the ongoing course of business.

(g) “Jurisdiction means the corporate limits of the City of Farmers Branch, Texas.

(h) “Police Chief” means the Chief of Police of the City of Farmers Branch, Texas.

Sec. 38-38 Local Amendments Adopted

For purposes of enforcement of the provisions of the Fire Code within the incorporated limits of the City, the following sections, paragraphs, and sentences of the 2015 Edition of the International Fire Code are hereby amended as follows:

Section 102.1 is amended by amending numbered paragraph 3 to read as follows:

3. Existing structures, facilities and conditions when required in Chapter 11 or in specific sections of this code.

Section 105.6 is amended to read as follows:

105.6 Required operational permits. The fire code official is authorized to issue operational permits for the operations set forth in sections 105.6.1 through 105.6.48. Operational permit fees are referenced in Appendix A-Fee Schedule, City of Farmers Branch Code of Ordinances.

Section 105.7 is amended to read as follows:

105.7 Required construction permits. The fire code official is authorized to issue construction permits for work as set forth in sections 105.7.1 through 105.7.19. Construction permit fees are referenced in Appendix A-Fee Schedule, City of Farmers Branch Code of Ordinances.

Section 105.7 is amended by adding Section 105.7.19 to read as follows:

105.7.19 Electronic access control systems. Construction permits are required for the installation or modification of an electronic access control system, as specified in Chapter 10. A separate construction permit is required for the installation or modification of a fire alarm system that may be connected to the access control system. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

Section 108, including all of its subsections, is deleted.

Section 109.3.1 is amended to read as follows:

Section 109.3.1 Service. A notice of violation issued pursuant to this code shall be served upon the *owner,* the owner's authorized agent, operator, occupant, or other person responsible for the condition or violation, either by personal service, electronic mail, mail or by delivering the same to, and leaving it with, some person of responsibility upon the premises… {Remaining text unchanged}

Section 202 is amended by adding definitions for the phrases "DEFENDING IN PLACE," "SELF-SERVICE STORAGE FACILITY, "STANDYBY PERSONNEL," and "UPGRADED OR REPLACED FIRE ALARM SYSTEM" to read as follows:

DEFEND IN PLACE. A method of emergency response that engages building components and trained staff to provide occupant safety during an emergency. Emergency response involves remaining in place, relocating within the building, or both, without evacuating the building.

SELF-SERVICE STORAGE FACILITY. Real property designed and used for the purpose of renting or leasing individual storage spaces to customers for the purpose of storing and removing personal property on a self-service basis.

STANDBY PERSONNEL. Qualified fire service personnel, approved by the fire code official. When utilized, the number required shall be as directed by the fire code official. Charges for utilization shall be normally calculated by the jurisdiction.

UPGRADED OR REPLACED FIRE ALARM SYSTEM. A fire alarm system that is upgraded or replaced includes, but is not limited to the following:

1. Replacing a single board or fire alarm control unit component with a newer model
2. Installing a new fire alarm control unit in addition to or in place of an existing one
3. Conversion from a horn/strobe system to an emergency voice/alarm communication system
4. Conversion from a conventional system to one that utilizes addressable or analog devices.

The following are not considered an upgrade or replacement:

1. Firmware updates
2. Software updates
3. Replacing boards of the same model with chips utilizing the same or newer firmware

Section 202 is amended by amending the definitions of "AMBULATORY HEALTH CARE FACILITY," "ATRIUM," "FIRE WATCH," "FIREWORKS," "HIGH-PILED COMBUSTIBLE STORAGE," "HIGH RISE BUILDING," AND "REPAIR GARAGE" to read as follows:

AMBULATORY CARE FACILITY. Buildings or portions thereof used to provide medical, surgical, psychiatric, nursing or similar care on a less than 24-hour basis to persons who are rendered incapable of self-preservation by the services provided. This group shall include but not be limited to the following:

- Dialysis center
- Procedures involving Sedation
- Sedation dentistry
- Surgery centers
- Colonic centers
- Psychiatric centers

ATRIUM. An opening connecting three or more stories….*{remaining text unchanged}*

FIRE WATCH. A temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals or standby personnel when required by the fire code official, for the purposes of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire and notifying the fire department.

FIREWORKS. Any composition or device for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, deflagration, detonation, and/or activated by

ignition with a match or other heat producing device that meets the definition of 1.4G fireworks or 1.3G fireworks as set forth herein. *…{remainder of text unchanged}…*

HIGH-PILED COMBUSTIBLE STORAGE. Storage of combustible materials in closely packed piles or combustible materials on pallets, in racks or on shelves where the top of storage is greater than 12 feet in height. When required by the fire code official, high-piled combustible storage also includes certain high-hazard commodities, such as rubber tires, Group A plastics, flammable liquids, idle pallets and similar commodities, where the top of storage is greater than 6 feet in height. Any building classified as a group S Occupancy or speculative building exceeding 2,500 sq.ft. that has a clear height in excess of 14 feet, making it possible to be used for storage in excess of 12 feet, shall be considered to be high-piled storage. When a specific product cannot be identified, a fire protection system and life safety features shall be installed as for Class IV commodities, to the maximum pile height.

HIGH-RISE BUILDING. A building with an occupied floor located more than 55 feet (16,764 mm) above the lowest level of fire department vehicle access.

REPAIR GARAGE. A building, structure or portion thereof used for servicing or repairing motor vehicles. This occupancy shall also include garages involved in minor repair, modification and servicing of motor vehicles for items such as lube changes, inspections, windshield repair or replacement, shocks, minor part replacement and other such minor repairs.

<u>Section 307.1.1 is amended to read as follows:</u>

Section 307.1.1 Prohibited open burning. Open burning that is offensive or objectionable because of smoke emissions, or when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited.

Exception: *{No Change.}*

<u>Section 307.2 is amended to read as follows:</u>

Section 307.2 Permit required. A permit shall be obtained from the fire code official in accordance with Section 105.6 prior to kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or open burning. Application for such approval shall only be presented by and permits issued to the owner of the land upon which the fire is to be kindled.

Examples of state or local law, or regulations referenced elsewhere in this section may include but not be limited to the following:

1. Texas Commission on Environmental Quality guidelines and/or restrictions.
2. State, County or local temporary or permanent bans on open burning.
3. Local written policies as established by the fire code official.

Section 307.3 is amended to read as follows:

Section 307.3 Extinguishment authority. The fire code official is authorized to order the extinguishment by the permit holder, another person responsible or the fire department of open burning that creates or adds to a hazardous or objectionable situation.

Section 307.4 is amended to read as follows:

307.4 Location. The location for open burning shall not be less than 300 feet (91,440 mm) from any structure, and provisions shall be made to prevent the fire from spreading to within 300 feet (91,440 mm) of any structure.

{*Exceptions unchanged}*

Section 307.4.3 is amended by adding a new paragraph 2 under "Exceptions" to read as follows:

2. Where buildings, balconies and decks are protected by an approved automatic sprinkler system.

Section 307.4 is amended by adding Section 307.4.4 and Section 307.4.5 to read as follows:

307.4.4 Permanent outdoor fire pit. Permanently installed outdoor fire pits for recreational fire purposes shall not be installed within 10 feet of a structure or combustible material.

Exception: Permanently installed outdoor fireplaces constructed in accordance with the International Building Code.

307.4.5 Trench Burns. Trench burns shall be conducted in air curtain trenches and in accordance with Section 307.2.

307.5 is amended to read as follows:

307.5 Attendance. Open burning, trench burns, bonfires, recreational fires and use of portable outdoor fire places shall be constantly attended until the …. {Remainder of the section unchanged}.

Section 308.1.4 is amended to read as follows:

308.1.4 Open-flame cooking devices. Open-flame cooking devices, charcoal grills, and other similar devices used for cooking, shall not be located or used on combustible balconies, decks, or within 10 feet (3048 mm) of combustible construction.

Exceptions:

1. One- and two-family dwelling, except that LP-gas containers are limited to a water capacity not greater than 50 pounds (22.68 kg) [nominal 20 pound (9.08 kg) LP-gas capacity] with an aggregate LP-gas capacity not to exceed 100 lbs. (5 containers).

2. Where buildings, balconies and decks are protected by an approved automatic sprinkler system, except that LP-gas containers are limited to a water capacity not greater than 50 pounds (22.68 kg) [nominal 20 pound (9.08 kg) LP-gas capacity], with an aggregate LP-gas capacity not to exceed 40 lbs. (2 containers).

3. LP-gas cooking devices having LP-gas container with a water capacity not greater than 2 1/2 pounds [nominal 1 pound (0.454 kg) LP-gas capacity].

Section 308.1.6.2 is amended by amending Exception number 3 to read as follows:

3. Torches or flame-producing devices in accordance with Section 308.1.3.

Section 308.1.6.3 is amended to read as follows:

308.1.6.3 Sky Lanterns. A person shall not release or cause to be released an-unmanned free-floating devices containing an open flame or other heat source, such as but not limited to a sky lantern.

Section 311.5 is amended to read as follows:

311.5 Placards. The fire code official is authorized to require marking of any vacant or abandoned buildings or structures determined to be unsafe pursuant to Section 110 of this code relating to structural or interior hazards, as required by Section 311.5.1 through 311.5.5.

Section 403.5 is amended to read as follows:

403.5 Group E occupancies. An approved fire safety and evacuation plan in accordance with Section 404 shall be prepared and maintained for Group E occupancies and for buildings containing both a Group E occupancy and an atrium. A diagram depicting two evacuation routes shall be posted in a conspicuous location in each classroom. Group E occupancies shall also comply with sections 403.5.1 through 403.5.3.

Section 404.2.2; by adding number 4.10 to read as follows:

4.10 Fire extinguishing system controls.

Section 405.4 is amended to read as follows:

405.4 Time. The fire code official may require an evacuation drill at any time. Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in case of fire.

Section 501.4 is amended to read as follows:

501.4 Timing of installation. When fire apparatus access roads or a water supply for fire protection is required to be installed for any structure or development, they shall be installed, tested, and approved prior to the time of which construction has progressed beyond completion of the foundation of any structure.

Section 503.1.1 is amended to read as follows:

503.1.1 Buildings and facilities. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45,720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. Except for one-or two-family dwellings, the path of measurement shall be along a minimum of a ten feet (10') wide unobstructed pathway around the external walls of the structure.

Exception: {unchanged}

Section 503.2.1 is amended to read as follows:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 24 feet (7315 mm), exclusive of shoulders, and an unobstructed vertical clearance of not less than 14 feet (4267 mm).

Section 503.2.3 is amended to read as follows:

503.2.3 Surface. Fire apparatus access roads shall be designed and maintained to support the imposed loads of 80,000 lbs. for fire apparatus and shall be surfaced so as to provide all-weather driving capabilities.

Section 503.3 is amended to read as follows:

503.3 Marking. Striping, signs, or other markings, when approved by the fire code official, shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Striping, signs and other markings shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility.

(1) Striping – Fire apparatus access roads shall be continuously marked by painted lines of red traffic paint six inches (6") in width to show the boundaries of the lane. The words "FIRE LANE NO PARKING" shall appear in four inch (4") white letters at 15 feet intervals on the red border markings along both sides of the fire lanes. A 12-inch spacing is required between "FIRE LANE" and "NO PARKING". Where a curb is available, the stripping shall be on the vertical face of the curb.

(2) Signs – Signs shall read "FIRE LANE NO PARKING" and shall be 12" wide and 18" high. Signs shall be painted on a white background with letters and borders in red, using not less than 2" lettering. Signs shall be permanently affixed to a stationary post and the bottom of the sign shall be six feet, six inches (6' 6") above finished grade. Signs shall be spaced not more than fifty feet (50') apart along both sides of the fire lane. Signs may be installed on permanent buildings or walls or as approved by the fire code official.

Section 503.4 is amended to read as follows:

503.4 Obstruction of fire apparatus access roads. Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Section 503.2.1 and any area marked as a fire lane as described in Section 503.3 shall be maintained at all times.

Section 505.1 is amended to read as follows:

505.1 Address identification. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals. Numbers shall be a minimum of 12 inches (304 mm) high with a minimum stroke width of 2 inches (50 mm). Suite numbers shall be a minimum of 6 inches (154 mm) high with a minimum stroke width of 1 inch (25mm) and numbers on rear-entry doors shall be a minimum of 3 inches (76 mm) high with a minimum stroke of 0.5 inch (12.7 mm). Obsolete address numbers shall be removed as directed by the code official.

Sections 507.5.1 and 507.5.1.1 are amended to read as follows:

507.5.1 Where required. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 300 feet (91 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

507.5.1.1 Hydrant for sprinkler and standpipe systems. Buildings equipped with an automatic fire sprinkler or standpipe system shall have a fire hydrant within 100 feet (30 480 mm) of the fire department connection.

Exception: The distance shall be permitted to exceed 100 feet (30 480 mm) where *approved* by the *fire code official.*

Section 507.5.4 is amended to read as follows:

507.5.4 Obstruction. Unobstructed access to fire hydrants shall be maintained at all times. Posts, fences, vehicles, growth, trash, storage and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections or fire protection system control valves in a manner that would prevent such equipment or fire hydrants from being immediately discernible.

The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.

Section 509.1 is amended by adding a new Section 509.1.2 to read as follows:

509.1.2 Sign Requirements. Unless more stringent requirements apply, lettering for signs required by this section shall have a minimum height of two (2) inches (50.8 mm) when located inside a building and four (4) inches (101.6 mm) when located outside, or as approved by the fire code official. The letters shall be of a color that contrasts with the background.

Section 603.3.2.1 is amended by changing the paragraph titled "Exception" to read in its entirety as follows:

> **Exception:** The aggregate capacity limit shall be permitted to be increased to 3,000 gallons (11,356 L) in accordance with all requirements of Chapter 57.
> {Remainder of Exception deleted.}

Section 603.3.2.2 is amended to read as follows:

603.3.2.2 Restricted use and connection. Tanks installed in accordance with Section 603.3.2 shall be used only to supply fuel oil to fuel-burning equipment installed in accordance with Section 603.3.2.4. Connections between tanks and equipment supplied by such tanks shall be made using closed piping systems.

Section 604.1.2 is amended to read as follows:

604.1.2 Installation. Emergency power systems and standby power systems shall be installed in accordance with the *International Building Code*, NFPA 70, NFPA 110 and NFPA 111. Existing installations shall be maintained in accordance with the original approval, except as specified in Chapter 11.

Section 604.1 is amended by adding Section 604.1.9 to read as follows:

Section 604.1.9 Critical Operations Power Systems (COPS). For Critical Operations Power Systems necessary to maintain continuous power supply to facilities or parts of facilities that require continuous operation for the reasons of public safety, emergency management, national security, or business continuity, see NFPA 70.

Section 604.2 is amended to read as follows:

604.2 Where Required. Emergency and standby power systems shall be provided where required by Sections 604.2.1 through 604.2.24 or elsewhere identified in this code or any other referenced code.

Section 604.2.4 is amended to read as follows:

604.2.4 Emergency Voice/alarm Communications Systems. Emergency power shall be provided for emergency voice/alarm communications systems in the following occupancies, or as specified elsewhere in this code, as required in Section 907.5.2.2.5. The system shall be capable of powering the required load for a duration of not less than 24 hours, as required in NFPA 72.

1. Covered and Open Malls, Section 907.2.20 and 914.2.3
2. Group A Occupancies, Sections 907.2.1 and 907.5.2.2.4.
3. Special Amusement Buildings, Section 907.2.12.3
4. High-rise Buildings, Section 907.2.13
5. Atriums, Section 907.2.14
6. Deep Underground Buildings, Section 907.2.19

Section 604.2.12 is amended to read as follows:

604.2.12 Means of Egress Illumination. Emergency power shall be provided for *means of egress* illumination in accordance with Sections 1008.3 and 1104.5.1. (90 minutes)

Section 604.2.13 is amended to read as follows:

604.2.13 Membrane Structures. Emergency power shall be provided for *exit* signs in temporary tents and membrane structures in accordance with Section 3103.12.6.1. (90 minutes) Standby power shall be provided for auxiliary inflation systems in permanent membrane structures in accordance with Section 2702 of the *International Building Code*. (4 hours) Auxiliary inflation systems shall be provided in temporary air-supported and air-inflated membrane structures in accordance with section 3103.10.4.

Section 604.2.15 is amended to read as follows:

604.2.15 Smoke Control Systems. Standby power shall be provided for smoke control systems in the following occupancies, or as specified elsewhere in this code, as required in Section 909.11:

1. Covered Mall Building, *International Building Code*, Section 402.7
2. Atriums, *International Building Code*, Section 404.7
3. Underground Buildings, *International Building Code*, Section 405.8
4. Group I-3, *International Building Code*, Section 408.4.2
5. Stages, *International Building Code*, Section 410.3.7.2
6. Special Amusement Buildings (as applicable to Group A's), *International Building Code*, Section 411.1
7. Smoke Protected Seating, Section 1029.6.2.1

Section 604.2 is amended by adding Sections 604.2.17 through 604.2.23 to read as follows:

604.2.17 Covered and Open Mall Buildings. Emergency power shall be provided in accordance with Section 907.2.20 and 914.2.3.

604.2.18 Smoke proof Enclosures and Stair Pressurization Alternative. Standby power shall be provided for smoke proof enclosures, stair pressurization alternative and associated automatic fire detection systems as required by the *International Building Code*, Section 909.20.6.2.

604.2.19 Elevator Pressurization. Standby power shall be provided for elevator pressurization system as required by the *International Building Code*, Section 909.21.5.

604.2.20 Elimination of Smoke Dampers in Shaft Penetrations. Standby power shall be provided when eliminating the smoke dampers in ducts penetrating shafts in accordance with the *International Building Code*, Section 717.5.3, exception 2.3.

604.2.21 Common Exhaust Systems for Clothes Dryers. Standby power shall be provided for common exhaust systems for clothes dryers located in multistory structures in accordance with the *International Mechanical Code*, Section 504.10, Item 7.

604.2.22 Hydrogen Cutoff Rooms. Standby power shall be provided for mechanical ventilation and gas detection systems of Hydrogen Cutoff Rooms in accordance with the *International Building Code*, Section 421.8.

604.2.23 Means of Egress Illumination in Existing Buildings. Emergency power shall be provided for *means of egress* illumination in accordance with Section 1104.5 when required by the fire code official. (90 minutes in I-2, 60 minutes elsewhere.)

Section 604 is amended by adding Section 604.8 to read as follows:

604.8 Energy Time Duration. Unless a time limit is specified by the fire code official, in this chapter or elsewhere in this code, or in any other referenced code or standard, the emergency and standby power system shall be supplied with enough fuel or energy storage capacity for not less than 2-hour full-demand operation of the system.

> **Exception:** Where the system is supplied with natural gas from a utility provider and is approved.

Section 609.2 is amended to read as follows*:*

609.2 Where Required. A Type I hood shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease vapors, including but not limited to cooking equipment used in fixed, mobile, or temporary concessions, such as trucks, buses, trailers, pavilions, or any form of roofed enclosure, as required by the fire code official.

> **Exceptions:**
> 1. Tents, as provided for in Chapter 31.
> 2. {No change to existing Exception 2.}

Additionally, fuel gas and power provided for such cooking appliances shall be interlocked with the extinguishing system, as required by Section 904.12.2. Fuel gas containers and piping/hose shall be properly maintained in good working order and in accordance with all applicable regulations.

Section 704.1 is amended to read as follows:

704.1 Enclosure. Interior vertical shafts including, but not limited to, *stairways*, elevator hoist ways, service and utility shafts, that connect two or more stories of a building shall be enclosed or protected in accordance with the codes in effect at the time of construction but, regardless of when constructed, not less than as required in Chapter 11. New floor openings in existing buildings shall comply with the *International Building Code.*

Section 807.3 is amended to read as follows:

807.3 Combustible Decorative Materials. In occupancies in Groups A, E, I, and R-1, and dormitories in Group R-2, curtains, draperies, fabric hangings and other similar combustible decorative materials suspended from walls or ceilings shall comply with Section 807.4 and shall not exceed 10 percent of the specific wall or ceiling area to which they are attached.

Section 807.5.2.2 is amended to read as follows:

807.5.2.2 Artwork in Corridors. Artwork and teaching materials shall be limited on the walls of corridors to not more than 20 percent of the wall area. Such materials shall not be continuous from floor to ceiling or wall to wall. Curtains, draperies, wall hangings and other decorative material suspended from the walls or ceilings shall meet the flame propagation performance criteria of NFPA 701 in accordance with Section 807 or be noncombustible.

> **Exception:** Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 shall be limited to 50 percent of the wall area.

Section 807.5.2.3 is amended to read as follows:

807.5.2.3 Artwork in Classrooms. Artwork and teaching materials shall be limited on walls of classrooms to not more than 50 percent of the specific wall area to which they are attached. Curtains, draperies, wall hangings and other decorative material suspended from the walls or ceilings shall meet the flame propagation performance criteria of NFPA 701 in accordance with Section 807 or be noncombustible.

Section 807.5.5.2 is amended to read as follows:

Section 807.5.5.2 Artwork in Corridors. Artwork and teaching materials shall be limited on the walls of corridors to not more than 20 percent of the wall area. Such materials shall not be continuous from floor to ceiling or wall to wall. Curtains, draperies, wall hangings and other decorative material suspended from the walls or ceilings shall meet the flame propagation performance criteria of NFPA 701 in accordance with Section 807 or be noncombustible.

Exception: Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 shall be limited to 50 percent of the wall area.

Section 807.5.5.3 is amended to read as follows:

Section 807.5.5.3 Artwork in Classrooms. Artwork and teaching materials shall be limited on walls of classrooms to not more than 50 percent of the specific wall area to which they are attached. Curtains, draperies, wall hangings and other decorative material suspended from the walls or ceilings shall meet the flame propagation performance criteria of NFPA 701 in accordance with Section 807 or be noncombustible.

Section 901.6.3 is amended by amended to read as follows:

901.6.3 False Alarms and Nuisance Alarms. False alarms and nuisance alarms shall not be given, signaled or transmitted or caused or permitted to be given, signaled or transmitted in any manner.

Section 901.6 is amended by adding Sections 901.6.4 and 901.6.5 to read as follows:

901.6.4 Systems in high-rise buildings. The owner of a high-rise building shall be responsible for assuring that the fire and life-safety systems required by the Building Code are maintained in an operable condition at all times. Unless otherwise required by the chief, quarterly tests of such systems shall be conducted by approved persons. A written record shall be maintained and shall be made available to the inspection authority.

901.6.5 Smoke-control systems. Mechanical smoke-control systems, such as those in high-rise buildings, buildings containing atria, covered mall buildings and mechanical ventilation systems utilized in smoke proof enclosures and for smoke-removal systems utilized in high-piled combustible storage occupancies, shall be maintained in an operable condition at all times. Unless otherwise required by the chief, quarterly tests of such systems shall be conducted by approved persons. A written record shall be maintained and shall be made available to the inspection authority.

Section 903.1.1 is amended to read as follows:

903.1.1 Alternative protection. Alternative automatic fire-extinguishing systems complying with Section 904 shall be permitted in addition to automatic sprinkler protection where recognized by the applicable standard or as approved by the fire code official.

Section 903.2 is amended to read as follows:

Section 903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in Sections 903.2.1 through 903.2.12. In addition to other sections of the 2015 International Fire Code, an approved automatic fire sprinkler system shall be installed in the occupancies and locations, excluding detached Group U (private garages, carports and sheds), as follows:

1. All new buildings two (2) or more stories in height.

   Exception: One and two family dwellings.

2. All new buildings two thousand five hundred (2,500) square feet or greater AND additions two thousand five hundred (2,500) square feet or greater to existing buildings.

   Exception: Detached Group U occupancies and one and two family dwellings

3. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all Group R-3 Townhouse Occupancies.

4. Group A-1. An automatic sprinkler system shall be provided for Group A-1 Occupancies where one of the following conditions exists:

   a. The fire area exceeds 2500 square feet (465 m^2).

   b. The fire area has an occupant load of 300 or more.

   c. The fire area is located on a floor other than the level of exit discharge.

   d. The fire area contains a multi-theater complex.

5. Group A-2. An automatic sprinkler system shall be provided for Group A-2 Occupancies where one of the following conditions exists:

   a. The fire area exceeds 2500 square feet (465 m^2).

   b. The fire area has an occupant load of 100 or more.

   c. The fire area is located on a floor other than the level of exit discharge.

6. Group A-3. An automatic sprinkler system shall be provided for Group A-3 Occupancies where one of the following conditions exists:

   a. The fire area exceeds 2500 square feet (465 m^2).

   b. The fire area has an occupant load of 300 or more.

   c. The fire area is located on a floor other than the level of exit discharge.

   Exception: Areas used exclusively as participant sports areas where the main floor area is located at the same level as the level of exit discharge of the main entrance and exit.

7. Group A-4. An automatic sprinkler system shall be provided for Group A-4 Occupancies where one of the following conditions exists:

   a. The fire area exceeds 2500 square feet (465 m^2).

   b. The fire area has an occupant load of 300 or more.

   c. The fire area is located on a floor other than the level of exit discharge.

8. All Group R-1 and R-2 occupancies.

9. All Group S-2 (open parking garages).

   Exception: Of noncombustible construction that has no other types of occupancies located above the garage and has a minimum of two complete sides unobstructed for fire department access by roadway or fire lane.

10. In all buildings and structures where Section 903.2 of the Fire Code requires sprinkler systems in buildings or structures of less than 2,500 square feet.

11. Throughout all self-service storage facilities.

    Exception: One-story self-service storage facilities that have no interior corridors, with a one-hour fire barrier separation wall installed between every storage compartment.

12. All stories and basements described in 903.2.11.1, 903.2.11.1.1, 903.2.11.1.2, and 903.2.11.1.3.

13. All rubbish and linen chutes as described in 903.2.11.2.

14. All other hazards as described in 903.2.11.4, and 903.2.11.5.

15. All other required suppression systems as described in 903.2.11.6.

16. High –Piled Combustible Storage. For any building with a clear height exceeding 12 feet (4572 mm), see Chapter 32 to determine if those provisions apply.

17. New and existing spray booths and spraying rooms shall be protected by an approved automatic fire-extinguishing system.

18. During construction as described in 903.2.12 and 3314.

19. All existing buildings two thousand five hundred (2,500) square feet or greater that change the occupancy type from a less hazardous to a more hazardous occupancy, based on life and fire risk.

Firewalls or fire barriers shall not be used to subdivide a building or structure into separate buildings to avoid the requirement to install a fire extinguishing system or automatic sprinkler system as required by this Section 903.2.

Section 903.1.1.1 is amended to read as follows:

903.3.1.1.1 Exempt locations. When approved by the building official and fire code official, automatic sprinklers shall not be required in the following rooms or areas where such rooms or areas are protected with an approved automatic fire detection system in accordance with Section 907.2 that will respond to visible or invisible particles of combustion and/or rate of rise heat detectors. Sprinklers shall not be omitted from any room merely because it is damp, of fire-resistance rated construction or contains electrical equipment.

1. Any room where the application of water, or flame and water, constitutes a serious life or fire hazard as determined by the building official or fire code official.

2. Any room or space where sprinklers are considered undesirable because of the nature of the contents, when approved by the building official or fire code official.

3. Generator and transformer rooms, under the direct control of a public utility, separated from the remainder of the building by walls and floor/ceiling or roof/ceiling assemblies having a fire-resistance rating of not less than 2 hours.

4. Elevator machine rooms, machinery spaces, and hoistways, other than pits where such sprinklers would not necessitate shunt trip requirements under any circumstances.

Section 903.3.1.2 is amended by adding Section 903.3.1.2.3 to read as follows:

903.3.1.2.3 Attics, Open Breezeways, and Attached Garages. Sprinkler protection is required in attic spaces of such buildings two or more stories in height, open breezeways, and attached garages in accordance with NFPA 13 and or NFPA 13R requirements.

Section 903.3.1.3 is amended to read as follows:

903.3.1.3 NFPA 13D sprinkler systems. Automatic sprinkler systems installed in one- and two-family dwellings, Group R-3 and R-4 Condition 1 and townhouses shall be permitted to be installed throughout in accordance with NFPA 13D or in accordance with state law.

Section 903.3.1 is amended by adding Section 903.3.1.4 to read as follows:

903.3.1.4 Freeze protection. Freeze protection systems for automatic fire sprinkler systems shall be in accordance with the requirements of the applicable referenced NFPA standard and this section.

903.3.1.4.1 Attics. Only dry-pipe, pre-action, or listed antifreeze automatic fire sprinkler systems shall be allowed to protect attic spaces.

> **Exception:** Wet-pipe fire sprinkler systems shall be allowed to protect non-ventilated attic spaces where:
>
> 1. The attic sprinklers are supplied by a separate floor control valve assembly to allow ease of draining the attic system without impairing sprinklers throughout the rest of the building, and
>
> 2. Adequate heat shall be provided for freeze protection as per the applicable referenced NFPA standard, and
>
> 3. The attic space is a part of the building's thermal, or heat, envelope, such that insulation is provided at the roof deck, rather than at the ceiling level.

903.3.1.4.2 Heat trace/insulation. Heat trace/insulation shall only be allowed where approved by the fire code official.

Section 903.3.5 is amended to read as follows:

903.3.5 Water supplies. Water supplies for automatic sprinkler systems shall comply with this section and the standards referenced in Section 903.3.1. The potable water supply shall be protected against backflow in accordance with the requirements of this section and the International Plumbing Code. Water supply as required for such systems shall be provided in conformance with the supply requirements of the respective standards; however, every fire protection system shall be designed with a 10 psi safety factor. Reference Section 507.4 for additional design requirements.

Section 903.4 is amended by adding the following paragraph after the *Exceptions*.

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

Section 903.4.2 is amended to read as follows:

903.4.2 Alarms. An approved audible device, located on the exterior of the building in an approved location, shall be connected to every automatic sprinkler system. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Where a fire alarm system is installed, actuation of the automatic sprinkler system shall actuate the building fire alarm system. The alarm device required on the exterior of the building shall be a weatherproof horn/strobe notification appliance

with a minimum 75 candela strobe rating, installed as close as practicable to the fire department connection.

Section 903.4.3 is amended to read as follows:

903.4.3 Floor control valves. Approved supervised indicating control valves and shall be provided at the point of connection to the riser on each floor in all buildings.

Section 905.2 is amended to read as follows:

905.2 Installation standards. Standpipe systems shall be installed in accordance with this section and NFPA 14. Manual Dry Standpipes shall be supervised with a minimum of 10 psig and a maximum 40-psig-air pressure with a high/low alarm.

Section 905.3 is amended by adding Section 905.3.9 to read as follows:

905.3.9 Buildings Exceeding 10,000 sq. ft. In buildings exceeding 10,000 square feet in area per story and where any portion of the building's interior area is more than 150 feet (45720 mm) of travel, vertically and horizontally, from the nearest point of fire department vehicle access, Class I automatic wet or manual wet standpipes shall be provided.

Exceptions:

1. Automatic dry and semi-automatic dry, or manual dry standpipes are allowed as provided for in NFPA 14 when approved by Code Official.

2. R-2 occupancies of four stories or less in height having no interior corridors.

Section 905.4 is amended to read as follows:

905.4 Location of Class I standpipe hose connections

Class I standpipe hose connections shall be provided in all of the following locations:

1. In every required exit stairway, a hose connection shall be provided for each story above and below grade plane. Hose connections shall be located at an intermediate landing between stories, unless otherwise approved by the fire code official.

2. On each side of the wall adjacent to the exit opening of a horizontal exit.

   Exception: Where floor areas adjacent to a horizontal exit are reachable from an interior exit stairway hose connection by a 30-foot (9144 mm) hose stream from a nozzle attached to 100 feet (30480 mm) of hose, a hose connection shall not be required at the horizontal exit.

3. In every exit passageway, at the entrance from the exit passageway to other areas of a building.

   Exception: Where floor areas adjacent to an exit passageway are reachable from an exit stairway hose connection by a 30- foot (9144 mm) hose stream from a nozzle attached to 100 feet (30480 mm) of hose, a hose connection shall not be required at the entrance from the exit passageway to other areas of the building.

4. In covered mall buildings, adjacent to each exterior public entrance from an exit passageway or exit corridor to the mall. In open mall buildings, adjacent to each public entrance to the mall at the perimeter line and adjacent to each entrance from an exit passageway or exit corridor to the mall.

5. Where the roof has a slope less than four unit's vertical in 12 unit's horizontal (33.3-percent slope), each standpipe shall be provided with a two-way ~~a~~ hose connection located to serve the roof or at the highest landing of an exit stairway with stair access to the roof provided in accordance with Section 1011.12.

6. Where the most remote portion of a nonsprinklered floor or story is more than 150 feet (45720 mm) from a hose connection or the most remote portion of a sprinklered floor or story is more than 200 feet (60960 mm) from a hose connection, the fire code official is authorized to require that additional hose connections be provided in approved locations.

7. When required by this Chapter, standpipe connections shall be placed adjacent to all required exits to the structure and at two hundred feet (200') intervals along major corridors thereafter, or as otherwise approved by the fire code official.

Section 905.9 is amended by adding the following paragraph after the *Exceptions*:

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

Paragraph 1 of Section 906.1 is amended to read in its entirety as follows, including the deletion of the *Exception*:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies

Section 907.1 is amended by adding Section 907.1.4 to read as follows:

907.1.4 Design Standards. Where a new fire alarm system is installed, the devices shall be addressable. Fire alarm systems utilizing more than 20 smoke detectors shall have analog initiating devices.

<u>Section 907.2.1 is amended to read as follows</u>:

907.2.1 Group A. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group A occupancies having an occupant load of 300 or more persons or more than 100 persons above or below the lowest level of exit discharge. Group A occupancies not separated from one another in accordance with Section 707.3.10 of the International Building Code shall be considered as a single occupancy for the purposes of applying this section. Portions of Group E occupancies occupied for assembly purposes shall be provided with a fire alarm system as required for the Group E occupancy.

Activation of fire alarm notification appliances shall:

1. Cause illumination of the means of egress with light of not less than 1 foot-candle (11lux) at the walking surface level, and

2. Stop any conflicting or confusing sounds and visual distractions.

<u>Section 907.2.3 is amended to read in its entirety as follows:</u>

907.2.3 Group E. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E educational occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarms system. An approved smoke detection system shall be installed in Group E day care occupancies. Unless separated by a minimum of 100' open space, all buildings, where portable buildings or the main building, will be considered one building for alarm occupant load consideration and interconnection of alarm systems.

Exceptions:

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less when provided with an approved automatic sprinkler system.

   1.1 Residential In-Home day care with not more than 12 children may use hard-wired or wireless interconnected single station detectors with battery backup in all habitable rooms. (For care of more than five children 2 ½ or less years of age, see Section 907.2.6).

2. Emergency voice/alarm communication systems meeting the requirements of section 907.5.2.2 and installed in accordance with section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an *approved* occupant notification signal in accordance with Section 907.5.

<u>Section 907.2.4 is amended by deleting the paragraph titled "Exception."</u>

Section 907.2.7 is amended by amending Exception 1 to read as follows and deleting Exception 2:

Exception:

1. A manual fire alarm system is not required in covered mall buildings complying with Section 402 of the International Building Code.

Section 907.2.8.1 is amended by deleting Exceptions 2, 2.1, 2.2, and 2.3.

Section 907.2.9.1 is amended by deleting Exceptions 2 and 3.

Section 907.2.11.2 is amended by adding the following sentence at the end of the section.

All smoke alarms shall be listed and installed in accordance with the provisions of this code and the household fire warning equipment provisions of NFPA 72.

Exception 3 in Section 907.2.13 is amended to read as follows:

3. Open air portions of buildings with an occupancy in Group A-5 in accordance with Section 303.1; however, this exception does not apply to accessory uses including but not limited to skyboxes, restaurants and similarly enclosed areas.

Section 907.2.13.1.1 is amended by amending numbered paragraph 1 and adding a new numbered paragraph 3 to read as follows:

1. In each mechanical equipment, electrical, transformer, telephone equipment or similar room, and Central Control Station.

* * *

3. For Group R, Division 1 Occupancies, in all interior corridors serving as a means of egress for an occupant load of 10 or more.

Section 907.4.2 is amended by adding Section 907.4.2 to read as follows:

907.4.2.7 Type. Manual alarm actuating devices shall be an approved double action type.

Section 907.6.1 is amended by adding Section 907.6.1.1 to read as follows:

907.6.1.1 Wiring Installation. All fire alarm systems shall be installed in such a manner that a failure of any single initiating device or single open in an initiating circuit conductor will not interfere with the normal operation of other such devices. All signaling line circuits (SLC) shall be installed in such a way that a single open will not interfere with the operation of any addressable devices (Class A). Outgoing and return SLC conductors shall be installed in accordance with NFPA

72 requirements for Class A circuits and shall have a minimum of four feet separation horizontal and one foot vertical between supply and return circuit conductors. The initiating device circuit (IDC) from an addressable input (monitor) module may be wired Class B, provided the distance from the addressable module to the initiating device is ten feet or less.

Section 907.6.3 is amended by delete all "Exceptions."

Section 907.6.4.2 is amended to read as follows:

907.6.4.2 High-rise buildings. In high-rise buildings, a separate zone by floor or an addressable fire alarm system shall be provided, based on the current fire alarm system installation for each of the following types of alarm-initiating devices where provided:

1. Smoke detectors
2. Sprinkler waterflow devices.
3. Manual fire alarm boxes.
4. Other approved types of automatic fire detection devices or suppression systems.
5. In Group B office buildings, corridor walls and ceilings need not be of fire resistive construction within office spaces of a single tenant when the space is equipped with an automatic smoke-detection system within the corridor. The actuation of any detector shall activate alarms audible in all areas served by the corridor. The smoke-detection system shall be connected to the building's fire alarm system where such a system is provided.

Section 907.6.6 is amended by adding a sentence at the end of paragraph to read as follows*:*

See 907.6.3 for the required information transmitted to the supervising station.

Section 907.6.6 is amended by adding Section 907.6.6.3 to read as follows:

907.6.6.3 Communication requirements. All alarm systems, new or replacement, shall transmit alarm, supervisory and trouble signals descriptively to the approved central station, remote supervisory station or proprietary supervising station as defined in NFPA 72, with the correct device designation and location of addressable device identification. Alarms shall not be permitted to be transmitted as a general alarm or zone condition.

Section 909.2 is amended by adding Section 909.2.1 to read as follows:

909.2.1 Smoke-control System for High-Rises. A smoke control system meeting the requirements of Section 909 in the International Fire Code-2015 Edition and this code shall be provided for high-rise buildings.

<u>Section 909 is amended by adding Section 909.22 and related subsections to read as follows</u>:

909.22 Stairway or Ramp Pressurization Alternative. Where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 and the stair pressurization alternative is chosen for compliance with Building Code requirements for a smoke proof enclosure, interior exit stairways or ramps shall be pressurized to a minimum of 0.10 inches of water (25 Pa) and a maximum of 0.35 inches of water (87 Pa) in the shaft relative to the building measured with all interior exit stairway and ramp doors closed under maximum anticipated conditions of stack effect and wind effect. Such systems shall comply with Section 909, including the installation of a separate fire-fighter's smoke control panel as per Section 909.16, and a Smoke Control Permit shall be required from the fire department as per Section 105.7.

909.22.1 Ventilating equipment. The activation of ventilating equipment for the stair or ramp pressurization system shall be by smoke detectors installed at each floor level at an approved location at the entrance to the smoke proof enclosure. When the closing device for the stairway or ramp shaft and vestibule doors is activated by smoke detection or power failure, the mechanical equipment shall activate and operate at the required performance levels. Smoke detectors shall be installed in accordance with Section 907.3.

909.22.1.1 Ventilation Systems. Smoke proof enclosure ventilation systems shall be independent of other building ventilation systems. The equipment, control wiring, power wiring and ductwork shall comply with one of the following:

1. Equipment, control wiring, power wiring and ductwork shall be located exterior to the building and directly connected to the smoke proof enclosure or connected to the smoke proof enclosure by ductwork enclosed by not less than 2-hour fire barriers constructed in accordance with Section 707 of the Building Code or horizontal assemblies constructed in accordance with Section 711 of the Building Code, or both.

2. Equipment, control wiring, power wiring and ductwork shall be located within the smoke proof enclosure with intake or exhaust directly from and to the outside or through ductwork enclosed by not less than 2-hour barriers constructed in accordance with Section 707 of the Building Code or horizontal assemblies constructed in accordance with Section 711 of the Building Code, or both.

3. Equipment, control wiring, power wiring and ductwork shall be located within the building if separated from the remainder of the building, including other mechanical equipment, by not less than 2-hour fire barriers constructed in accordance with Section 707 of the Building Code or horizontal assemblies constructed in accordance with Section 711 of the Building Code, or both.

Exceptions:

1. Control wiring and power wiring utilizing a 2-hour rated cable or cable system.

2. Where encased with not less than 2 inches (51 mm) of concrete.

3. Control wiring and power wiring protected by a listed electrical circuit protective systems with a fire-resistance rating of not less than 2 hours.

909.22.1.2 Standby Power. Mechanical vestibule and stairway and ramp shaft ventilation systems and automatic fire detection systems shall be provided with standby power in accordance with Section 2702 of the Building Code.

909.22.1.3 Acceptance and Testing. Before the mechanical equipment is approved, the system shall be tested in the presence of the fire code official to confirm that the system is operating in compliance with these requirements.

Section 910.2 is amended by amending Exceptions 2 and 3 to read as follows:

2. Where areas of buildings are equipped with early suppression fast-response (ESFR) sprinklers, only manual smoke and heat vents or manually activated engineered mechanical smoke exhaust systems shall be required within these areas. Automatic smoke and heat vents are prohibited.

3. Only manual smoke and heat removal shall be required in areas of buildings equipped with control mode special application sprinklers with a response time index of $50(m*s)^{1/2}$ or less that are listed to control a fire in stored commodities with 12 or fewer sprinklers. Automatic smoke and heat removal is prohibited.

Section 910.2 is amended by adding Section 910.2.3 to read as follows:

910.2.3 Group H. Buildings and portions thereof used as a Group H occupancy as Section follows:

1. In occupancies classified as Group H-2 or H-3, any of which are more than 5,000 square feet in single floor area.

   Exception: Buildings of noncombustible construction containing only noncombustible materials.

2. In areas of buildings in Group H used for storing Class 2, 3, and 4 liquid and solid oxidizers, Class 1 and unclassified detonable organic peroxides, Class 3 and 4 unstable (reactive) materials, or Class 2 or 3 water-reactive materials as required for a high-hazard commodity classification.

   Exception: Buildings of noncombustible construction containing only noncombustible materials.

<u>Section 910.3 is amended by adding Section 910.3.4 and related subsections to read as follows</u>:

910.3.4 Vent Operation. Smoke and heat vents shall be capable of being operated by approved automatic and manual means. Automatic operation of smoke and heat vents shall conform to the provisions of Sections 910.3.2.1 through 910.3.2.3.

> **910.3.4.1 Sprinklered buildings**. Where installed in buildings equipped with an approved automatic sprinkler system, smoke and heat vents shall be designed to operate automatically. The automatic operating mechanism of the smoke and heat vents shall operate at a temperature rating at least 100 degrees F (approximately 38 degrees Celsius) greater than the temperature rating of the sprinklers installed.
>
> **Exception:** Manual only systems per Section 910.2.
>
> **910.3.4.2 Nonsprinklered Buildings.** Where installed in buildings not equipped with an approved automatic sprinkler system, smoke and heat vents shall operate automatically by actuation of a heat-responsive device rated at between 100°F (56°C) and 220°F (122°C) above ambient.
>
> **Exception:** Listed gravity-operated drop out vents.
>
> **910.3.4.3 Gravity-operated drop out vents.** Automatic smoke and heat vents containing heat sensitive glazing designed to shrink and drop out of the vent opening when exposed to fire shall fully open within 5 minutes after the vent cavity is exposed to a simulated fire represented by a time-temperature gradient that reaches an air temperature of 500 degrees F (260 degrees C) within 5 minutes

<u>Section 910.4.4 is amended to read as follows</u>:

910.4.4 Activation. The mechanical smoke removal system shall be activated automatically by the automatic sprinkler system or by an approved fire detection system. Individual manual controls shall also be provided.

> **Exception:** Manual only systems per Section 910.2.

<u>Section 912.2 is amended by adding Section 912.2.3 to read as follows</u>*:*

912.2.3 Hydrant Distance. An approved fire hydrant shall be located within 100 feet of the fire department connection as the fire hose lays along an unobstructed path.

<u>Section 913.2.1 is amended by adding the following second paragraph and exception to read as follows</u>:

When located on the ground level at an exterior wall, the fire pump room shall be provided with an exterior fire department access door that is not less than 3 ft. in width and 6 ft. – 8 in. in height,

regardless of any interior doors that are provided. A key box shall be provided at this door, as required by Section 506.1.

> **Exception:** When it is necessary to locate the fire pump room on other levels or not at an exterior wall, the corridor leading to the fire pump room access from the exterior of the building shall be provided with equivalent fire resistance as that required for the pump room, or as approved by the *fire code official*. Access keys shall be provided in the key box as required by Section 506.1.

Section 914.3.1 is amended to read as follows, including deletion of the Exception:

914.3.1 Automatic sprinkler system. Buildings and structures shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 and a secondary water supply where required by Section 914.3.1.2

Section 914.3.1.2 is amended to read as follows:

914.3.1.2 Water Supply to required Fire Pumps. In buildings that are more than 120 feet (128 m) in *building height*, required fire pumps shall be supplied by connections to no fewer than two water mains located in different streets. Separate supply piping shall be provided between each connection to the water main and the pumps. Each connection and the supply piping between the connection and the pumps shall be sized to supply the flow and pressure required for the pumps to operate.

> **Exception:** {No change to exception.}

Chapter 10 is amended by replacing all references to "fire code official" with "building official."

Section 1006.2.2 is amended by adding Section 1006.2.2.6 to read as follows:

1006.2.2.6 Electrical Rooms. For electrical rooms, special exiting requirements may apply. Reference the Electrical Code as adopted.

Section 1009.1 is amended by adding Exception 4 to read as follows:

4. Buildings regulated under State Law and built in accordance with State registered plans, including any variances or waivers granted by the State, shall be deemed to be in compliance with the requirements of Section 1009.

Section 1010.1.9.4 is amended by amending Exceptions 3, 4, and 5 to read as follows:

3. Where a pair of doors serves an occupant load of less than 50 persons in a Group B, F, M, or S occupancy, manually operated edge-or surface-mounted bolts are permitted on the inactive leaf. The inactive leaf shall contain no doorknobs, panic bars or similar operating hardware.

4. Where a pair of doors serves a Group A, B, F, M or S occupancy, manually operated edge- or surface-mounted bolts are permitted on the inactive leaf provided such inactive leaf is not needed to meet egress width requirements and the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1. The inactive leaf shall contain no doorknobs, panic bars or similar operating hardware.

5. Where a pair of doors serves patient care rooms in Group I-2 occupancies, self-latching edge- or surface-mounted bolts are permitted on the inactive leaf provided that the inactive leaf is not needed to meet egress width requirements and the inactive leaf contains no doorknobs, panic bars or similar operating hardware.

Section 1010.1.9.8 is amended by adding paragraphs 7 and 8 to read as follows:

7 The building must be protected throughout by a monitored automatic fire sprinkler system with an approved smoke detector located on the egress side within 15 feet of the door OR for non-sprinklered buildings; an approved automatic smoke detection system is required in the path of egress.

8. The doors shall be capable of being deactivated by a signal from a switch located in a location approved approve by the Fire Department.

Section 1010.1.9.9 is amended by adding paragraphs 7, 8, and 9 to read as follows:

7 Activation of the building *automatic sprinkler system* or fire detection system shall automatically unlock the doors. The doors shall remain unlocked until the fire alarm system has been reset.

8. The building must be protected throughout by a monitored automatic fire sprinkler system with an approved smoke detector located on the egress side within 15 feet of the door OR for non-sprinklered buildings; an approved automatic smoke detection system is required in the path of egress.

9. The doors shall be capable of being deactivated by a signal from a switch located in a location approved approve by the Fire Department.

Section 1015.8 is amended by amending paragraph 1 to read as follows:

1. Operable windows where the top of the sill of the opening is located more than 55-ft (16 764 mm) above the finished grade or other surface below and that are provided with window fall prevention devices that comply with ASTM F 2006.

Section 1020.1 is amended by adding Exception 6 to read as follows:

6. In Group B office buildings, corridor walls and ceilings need not be of fire-resistive construction within a single tenant space when the space is equipped with approved automatic smoke-detection within the corridor. The actuation of any detector shall activate self-annunciating alarms audible in all areas within the corridor. Smoke detectors shall be connected to an approved automatic fire alarm system where such system is provided.

Section 1020.6 is amended to read as follows:

1020.6 Corridor continuity. All corridors shall be continuous from the point of entry to an exit, and shall not be interrupted by intervening rooms. {*remainder of section remains unchanged*}

Section 1029.1.1.1 is deleted.

Section 1031.2 is amended to read as follows:

1031.2 Reliability. Required exit accesses, exits and exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency. An exit or exit passageway shall not be used for any purpose that interferes with a means of egress.

Section 1103.3 is amended by adding the following sentence to end of paragraph:

Provide emergency signage as required by Section 607.3.

Section 1103.7.5.1 is amended by deleting Exceptions 2, 2.1, 2.2, and 2.3.

Section 1103.7 is amended by adding Sections 1103.7.8 and 1103.7.8.1 to read as follows:

1103.7.8 Fire Alarm System Design Standards. Where an existing fire alarm system is upgraded or replaced, the devices shall be addressable. Fire alarm systems utilizing more than 20 smoke and/or heat detectors shall have analog initiating devices.

Exception: Existing systems need not comply unless the total building, or fire alarm system, remodel or expansion exceeds 30% of the building. When cumulative building, or fire alarm system, remodel or expansion initiated after the date of original fire alarm panel installation exceeds 50% of the building, or fire alarm system, the fire alarm system must comply within 18 months of permit application.

1103.7.8.1 Communication requirements. Refer to Section 907.6.6 for applicable requirements.

Section 2304.1 is amended to read as follows:

2304.1 Supervision of Dispensing. The dispensing of fuel at motor fuel-dispensing facilities shall be in accordance with the following:

1. Conducted by a qualified attendant; and/or,

2. Shall be under the supervision of a qualified attendant; and/or

3. Shall be an unattended self-service facility in accordance with Section 2304.3.

At any time the qualified attendant of item Number 1 or 2 above is not present, such operations shall be considered as an unattended self-service facility and shall also comply with Section 2304.3.

Section 2401.2 is deleted.

Table 3206.2 is amended by amending Footnote j to read as follows:

j. Where storage areas are protected by either early suppression fast response (ESFR) sprinkler systems or control mode special application sprinklers with a response time index of 50 (m • s) 1/2 or less that are listed to control a fire in the stored commodities with 12 or fewer sprinklers, installed in accordance with NFPA 13, manual smoke and heat vents or manually activated engineered mechanical smoke exhaust systems shall be required within these areas.

Section 3310.1 is amended to read as follows:

3310.1 Required access. Approved vehicle access for firefighting shall be provided to all construction or demolition sites. Vehicle access shall be provided to within 100 feet (30 480 mm) of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting an 80,000 lb. vehicle loading under all weather conditions. Vehicle access shall be maintained until permanent fire apparatus access roads are available. When fire apparatus access roads are required to be installed for any structure or development, they shall be approved prior to the time of which construction has progressed beyond completion of the foundation of any structure.

Section 5601.1.3 is amended to read in its entirety as follows:

5601.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.

Exceptions:

1. Only when approved for fireworks displays, storage and handling of fireworks as allowed in Section 5604 and 5608.

2. The use of fireworks for approved displays as allowed in Section 5608.

<u>Section 5703.6 is amended to read as follows</u>:

5703.6 Piping Systems. Piping systems, and their component parts, for flammable and combustible liquids shall be in accordance with Section 5703.6.1 through 5703.6.11. An approved method of secondary containment shall be provided for underground tank and piping systems.

<u>Section 5704.2.9.5 is amended to read as follows</u>:

5704.2.9.5 Above-ground tanks inside of buildings. Above-ground tanks inside of buildings shall comply with Sections 5704.2.9.5.1 and 5704.2.9.5.2 through 5704.2.9.5.3. Storage of flammable or combustible liquids or hazardous materials in above-ground tanks inside of buildings is prohibited within limits established by law in the adopting ordinance as the limits of districts in which such storage is prohibited. The storage of flammable or combustible liquids or hazardous materials in aboveground tanks is prohibited in residential areas.

<u>Section 5704.2.9.5 is amended by adding Section 5704.2.9.5.3 to read as follows</u>:

5704.2.9.5.3 Combustible Liquid Storage Tanks Inside of Buildings. The maximum aggregate allowable quantity limit shall be 3,000 gallons (11 356 L) of Class II or III combustible liquid for storage in protected aboveground tanks complying with Section 5704.2.9.7 when all of the following conditions are met:

1. The entire 3,000 gallon (11 356 L) quantity shall be stored in protected above-ground tanks;

2. The 3,000 gallon (11 356 L) capacity shall be permitted to be stored in a single tank or multiple smaller tanks;

3. The tanks shall be located in a room protected by an *automatic sprinkler system* complying with Section 903.3.1.1; and

4. Tanks shall be connected to fuel-burning equipment, including generators, utilizing an *approved* closed piping system.

The quantity of combustible liquid stored in tanks complying with this section shall not be counted towards the maximum allowable quantity set forth in Table 5003.1.1(1), and such tanks shall not be required to be located in a control area. Such tanks shall not be located more than two stories below grade.

Section 5704.2.9.6 is amended to read as follows:

5704.2.9.6 Above-ground tanks outside of buildings. Above-ground tanks outside of buildings shall comply with Sections 5704.2.9.6.1 through 5704.2.9.6.3. The storage of flammable or combustible liquids or hazardous materials in aboveground tanks is prohibited in residential areas.

Section 5704.2.11.1 is amended by adding a paragraph 4 to read as follows:

4. The storage of flammable or combustible liquids or hazardous materials in underground tanks is prohibited in residential areas.

Section 5704.2.11.4 is amended to read as follows:

5704.2.11.4 Leak Prevention. Leak prevention for underground tanks shall comply with Sections 5704.2.11.4.1 through 5704.2.11.4.3. An *approved* method of secondary containment shall be provided for underground tank and piping systems.

Section 5704.2.11.4.2 is amended to read as follows:

5704.2.11.4.2 Leak Detection. Underground storage tank systems shall be provided with an *approved* method of leak detection from any component of the system that is designed and installed in accordance with NFPA 30 and as specified in Section 5704.2.11.4.3

Section 5704.2.11.4 is amended by adding Section 5704.2.11.4.3 to read as follows:

5704.2.11.4.3 Observation wells. Approved sampling tubes of a minimum 4 inches in diameter shall be installed in the backfill material of each underground flammable or combustible liquid storage tank. The tubes shall extend from a point 12 inches below the average grade of the excavation to ground level and shall be provided with suitable surface access caps. Each tank site shall provide a sampling tube at the corners of the excavation with a minimum of 4 tubes. Sampling tubes shall be placed in the product line excavation within 10 feet of the tank excavation and one every 50 feet routed along product lines towards the dispensers, a minimum of two are required.

Section 5704.3.8 is amended to read as follows:

5704.3.8 Liquid storage warehouses. The storage of flammable liquids as specified in Chapter 57 as “Liquid Storage Warehouses” is prohibited.

Section 5706.5.4.5 is amended to read as follows:

5706.5.4.5 Commercial, industrial, governmental or manufacturing. Dispensing of Class I, II, and III motor vehicle fuel from tank vehicles into the fuel tanks of motor vehicles located in open areas at commercial, industrial, governmental or manufacturing establishments is allowed where permitted, provided such dispensing operations are conducted in accordance with the following:

1 Dispensing shall occur only at *approved* locations at sites that have been issued a mobile fueling site permit that allows mobile fueling by permitted mobile fueling operators in accordance with Section 105.6.17.

2 Mobile fuel delivery to vehicles located inside or on the roof level of parking structures or other buildings is prohibited.

Exception: When approved by the *fire code official*, mobile fuel delivery to vehicles located on the roof level of parking structures or other buildings may be allowed where there is exterior vehicular access from grade level.

3. The *owner* of a mobile fueling operation shall develop a written safety and emergency response plan that:

3.1. establishes policies and procedures for fire safety, spill prevention and control, personnel training and compliance with other applicable requirements of this code;

3.2. demonstrates readiness to respond to a fuel spill and carry out appropriate mitigation measures, and

3.3. describes the process to dispose properly of contaminated materials.

The plan shall be submitted to the *fire code official* prior to approval of the permit application to conduct mobile fueling operations. It shall be maintained and updated by the permittee as needed and made available to the *fire code official* upon request.

4. A detailed site plan shall be submitted with each application for a mobile fueling site permit. The site plan shall indicate: all buildings, structures and appurtenances on site and their use or function; all uses adjacent to the lot lines of the site; the locations of all storm drain openings, adjacent waterways or wetlands; information regarding slope, natural drainage, curbing, impounding and how a spill will be retained upon the site property; and the scale of the site plan.

5. Provisions shall be made at mobile fueling sites to prevent liquids spilled during dispensing operations from flowing into buildings or off-site. Acceptable methods include, but shall not be limited to, grading driveways, raising doorsills or other *approved* means.

6. The *fire code official* is allowed to impose limits on the times and days during which mobile fueling operations are allowed to take place~~,~~ and specific locations on a site where fueling is permitted.

7. Mobile fueling operations shall be conducted in areas not accessible to the public or shall be limited to times when the public is not present within 15 feet (4572 mm) of dispensing operations.

8. Mobile fueling of Class I liquids shall not take place within 25 feet (7620 mm) of buildings, *lot lines* including those on a *public way*, combustible storage or storm drains measured from the dispensing nozzle. Mobile fueling of Class II and Class III liquids shall not take place within 15 feet (4572 mm) of buildings, *lot lines* including those on a *public way*, combustible storage or storm drains measured from the dispensing nozzle.

Exceptions:

1. The distance to storm drains shall not apply where an approved storm drain cover or an approved equivalent that will prevent any fuel from reaching the drain is in place prior to fueling or a fueling hose being placed within the applicable setback distance from the drain. Where placement of a storm drain cover will cause the accumulation of excessive water or difficulty in conducting the fueling, such cover shall not be used and the fueling shall not take place within the applicable setback distance from the drain.

2. The distance to storm drains shall not apply for drains that direct influent to approved *oil* interceptors.

3. Where *approved* by the *fire code official* and where an *approved* means of vapor recovery is utilized during fueling operations, mobile fueling of Class I liquids shall not take place within 15 feet (7620 mm) of buildings, *lot lines* including those on a *public way*, combustible storage or storm drains measured from the dispensing nozzle.

9 The tank vehicle shall comply with the requirements of Section 5706.6, NFPA 385 and local, state and federal requirements. The tank vehicle's specific function~~s~~ shall include that of supplying fuel to motor vehicle fuel tanks. The vehicle and all its equipment shall be maintained in good repair.

10. Tank vehicles used to dispense Class I fuels into the fuel tanks of motor vehicles shall have a maximum aggregate cargo capacity of 1,200 gallons.

11. Signs prohibiting smoking or open flames within 25 feet (7620 mm) of the tank vehicle or the point of fueling shall be prominently posted on not less than three sides of the vehicle including the back and both sides.

12. A portable fire extinguisher with a minimum rating of 40:BC shall be provided on the tank vehicle with signage clearly indicating its location.

13. Mobile fueling equipment and appurtenances shall be of an *approved* or *listed* type.

14. The dispensing hose of Class II and III liquids shall not be extended from the reel more than 100 feet (30 480 mm) in length. The dispensing hose of Class I liquids shall not be extended from the reel more than 50 feet (15 240 mm) in length.

15. Absorbent materials, nonwater-absorbent pads, a 10-foot-long (3048 mm) containment boom, an approved container with lid and a nonmetallic shovel shall be provided to mitigate a minimum 5-gallon (19 L) fuel spill.

16. Tank vehicles shall be equipped with a “fuel limit” switch, such as a count-back switch, to limit the amount of a single fueling operation to not more than 500 gallons (1893 L) of Class II or III liquids or 30 gallons (13.6 L) of Class I liquids before resetting the limit switch.

    Exception: Tank vehicles where the operator carries and can utilize a remote emergency shutoff device which, when activated, immediately causes flow of fuel from the tank vehicle to cease.

17. Persons responsible for dispensing operations shall be trained in the appropriate mitigating actions in the event of a fire, leak or spill. Training records shall be maintained by the dispensing company.

18. Operators of tank vehicles used for mobile fueling operations shall have in their possession at all times an emergency communication~~s~~ device to notify the proper authorities in the event of an emergency.

19. The tank vehicle dispensing equipment shall be constantly attended and operated only by designated personnel who are trained to handle and dispense motor fuels.

20. Fuel dispensing shall be prohibited within 25 feet (7620 mm) of any source of ignition. Fixed or portable electrical equipment located within 5 feet (1524 mm) of the point of connection, extending in all directions, and up to 18 inches (450 mm) above grade level within a horizontal radius of 10 feet (3048 mm) from Class I liquid dispensing operations shall be rated for use in Class I, Division 2 hazardous locations in accordance with NFPA 70.

21. The engines of vehicles being fueled shall be shut off during dispensing operations.

22. Nighttime fueling operations shall ~~only~~ take place only in adequately-lighted areas.

23. The tank vehicle shall be positioned with respect to vehicles being fueled to prevent traffic from driving over the delivery hose.

24. Tank vehicles and fuel delivery equipment shall not be positioned in a manner that obstructs emergency vehicle access roads.

25. The parking or staging and garaging of tank vehicles shall comply with Section 5706.6.2. Tank vehicles shall not be used as storage tanks.

26. During fueling operations, tank vehicle brakes shall be set, chock blocks shall be in place and warning lights shall be in operation.

27. Motor vehicle fuel tanks shall not be topped off.

28. The dispensing hose shall be properly placed on an *approved* reel or in an *approved* compartment prior to moving the tank vehicle.

29. The *fire code official* and other appropriate authorities shall be immediately notified when a reportable spill or unauthorized discharge occurs.

30. Operators shall place a drip pan or an absorbent pillow under each fuel fill opening prior to and during dispensing operations. Drip pans shall be liquid-tight. The pan or absorbent pillows shall have a capacity of not less than 3 gallons (11.36 L). Spills retained in the drip pan or absorbent pillow need not be reported. Operators, when fueling, shall have on their person an absorbent pad capable of capturing fuel overfills. Except during fueling, the nozzle shall face upward and an absorbent pad shall be kept under the nozzle to catch drips. Contaminated absorbent pads or pillows shall be disposed of regularly in accordance with local, state and federal regulations.

    Exception: The pan or absorbent pillows shall have a capacity of not less than 1 gallon (3.79 L) when single fueling operations are limited to not more than 30 gallons.

Section 5706.5.4 is amended by adding Sections 5706.5.4.6 and 5706.5.4.7 to read as follows:

5706.5.4.6 Commercial, industrial, governmental or manufacturing or other approved locations from other than tank vehicles. Dispensing of Class I, II and III motor vehicle fuel from mobile fueling vehicles not classified as tank vehicles into the fuel tanks of motor vehicles located in open areas at commercial, industrial, governmental or manufacturing establishments, or other approved locations is allowed where permitted, provided such dispensing operations are conducted in accordance with this section. Individual fuel supply tanks for mobile fueling installed on mobile fueling vehicles used to dispense fuels into the fuel tanks of motor vehicles shall have a maximum individual fuel capacity of 110 gallons. The maximum aggregate amount of all mobile fueling fuel supply tanks shall not exceed that allowed by local, state, and federal regulations not to exceed 1,100 gallons.

1. Dispensing shall occur only at *approved* locations that have been issued a mobile fueling site permit that allows mobile fueling by permitted mobile fueling operators in accordance with Section 105.6.17.

2. Mobile fuel delivery to vehicles located inside or on the roof level of parking structures or other buildings is prohibited.

    Exception: When approved by the fire code official, mobile fuel delivery to vehicles located on the roof level of parking structures or other buildings may be allowed where there is exterior vehicular access from grade level.

3. The *owner* of a mobile fueling operation shall develop and provide a written safety and emergency response plan that:

   3.1. establishes policies and procedures for fire safety, spill prevention and control, personnel training and compliance with other applicable requirements of this code;

   3.2. demonstrates readiness to respond to a fuel spill and carry out appropriate mitigation measures; and

   3.3. describes the process to dispose properly of contaminated materials.

   The plan shall be submitted to the *fire code official* prior to approval of the permit application to conduct mobile fueling operations. It shall be maintained and updated when necessary by the permittee. Any modifications to an approved plan shall be submitted as needed and made available to the *fire code official* for review and approval.

4. The times and days during which mobile fueling operations are permitted to take place shall be approved by the *fire code official*. Nighttime fueling operations shall only take place only in adequately-lighted areas.

5. Where required by the fire code official, a detailed site plan shall be submitted with each application for a mobile fueling site permit. The site plan shall indicate: all buildings, structures and appurtenances on site and their use or function; all uses adjacent to the lot lines of the site; the locations of all storm drain openings, adjacent waterways or wetlands; information regarding slope, natural drainage, curbing, impounding and how a spill will be retained upon the site property; and the scale of the site plan.

6. Provisions shall be made at mobile fueling locations to prevent liquids spilled during dispensing operations from flowing into buildings or off-site. Acceptable methods include, but shall not be limited to, grading driveways, raising doorsills, placement of absorbent socks, booms or pads or other *approved* means.

7. Mobile fueling of Class II or III liquids shall not take place within 15 feet (4572 mm) of buildings, property lines, combustible storage or storm drains. Mobile fueling of Class I liquids shall not take place within 25 feet (7620 mm) of buildings, *lot lines*, public streets, public alleys, *public ways*, combustible storage or storm drains measured from the dispensing nozzle.

   Exception: The distance to storm drains shall not apply where an approved storm drain cover or an approved equivalent that will prevent any fuel from reaching the drain is in place prior to fueling.

8. Fuel dispensing shall be prohibited within 25 feet (7620 mm) of sources of ignition, including electrical, in accordance with 5003.7. Signs prohibiting smoking or open flames within 25 feet (7620 mm) of the mobile fueling vehicle or the point of fueling shall be

prominently posted on not less than three sides of the vehicle including the back and both sides. The engines of vehicles being fueled shall be shut off during dispensing operations.

9. The dispensing hose used for dispensing of Class II and III liquids shall not be extended from the reel more than 100 feet (30 480 mm) in length. The dispensing hose used for dispensing of Class I liquids shall not be extended from the reel more than 50 feet (15 240 mm) in length. The nozzle, when the hose is fully extended, shall not reach within 5 feet (1524 mm) of building openings.

10. Mobile fueling vehicles and fuel delivery equipment shall not be positioned in a manner that obstructs emergency vehicle access roads. The mobile fueling vehicle shall be positioned with respect to vehicles being fueled to prevent traffic from driving over the delivery hose.

11. Mobile fueling vehicles shall be equipped with a “fuel limit” switch, such as a count-back switch, to limit the amount of a single fueling operation to not more than 30 gallons before resetting the limit switch.

    Exception: Mobile fueling vehicles where the operator carries and can utilize a remote emergency shut off device which, when activated, immediately causes flow of fuel from the tank vehicle to cease.

12. Absorbent materials, non-water-absorbent pads, containment booms, an approved container with lid and a nonmetallic shovel shall be provided to mitigate potential spills.

13. The mobile fueling vehicle dispensing equipment shall be constantly attended and operated only by designated personnel who are trained to handle and dispense motor fuels.

14. Persons responsible for dispensing operations shall be trained in the appropriate mitigating actions in the event of a fire, leak or spill. Training records shall be maintained by the dispensing company and made available to the fire code official.

15. A portable fire extinguisher with a minimum rating of 40:BC shall be provided on the mobile fueling vehicle with signage clearly indicating its location.

16. Operators of mobile fueling vehicles used for mobile fueling operations shall have in their possession at all times an emergency communication device to notify the proper authorities in the event of an emergency.

17. During fueling operations, mobile fueling vehicles brakes shall be set, chock blocks shall be in place and warning lights shall be in operation.

18. Operators shall place an absorbent pillow under each fuel fill opening prior to and during dispensing operations. The absorbent pillows shall have a capacity of not less than 1 gallon. Spills retained in absorbent pillow need not be reported.

19. The engines of vehicles being fueled shall be shut off during dispensing operations.

20. Any unauthorized discharge of motor fuel shall comply with Section 5003.3.1.

21. The dispensing hose shall be properly secured on an *approved* reel or in an *approved* compartment prior to moving the tank vehicles.

22. The parking or staging and garaging of mobile fueling vehicles shall comply with Section 5706.6.2. Mobile fueling vehicles shall not be used as storage tanks.

23. The tank vehicle's specific function shall include that of supplying fuel to motor vehicle fuel tanks. The vehicle and all its equipment shall be maintained in good repair.

24. Mobile fueling vehicles shall comply with applicable local, state and federal requirements. Documentation shall be provided upon request.

25. Individual fuel supply tanks for mobile fueling installed on mobile fueling vehicles used to dispense fuels into the fuel tanks of motor vehicles shall have a maximum individual fuel capacity of 110 gallons. The maximum aggregate amount of all mobile fueling fuel supply tanks shall not exceed that allowed by local, state, and federal regulations not to exceed 1,100 gallons.

26. Individual fuel supply tanks for mobile fueling shall not be manifold together through the same dispensing pump.

27. Mobile fuel dispensing equipment and appurtenances, shall be *listed* or *approved*.

28. Mobile fueling operations shall be limited to times when the public is not present within 15 feet (4572 mm) of dispensing operations.

5706.5.4.7 Dispensing motor vehicle fuel from portable containers. Dispensing of Class I, II and III motor vehicle fuel from portable containers into the fuel tanks of motor vehicles where the aggregate container capacity does not exceed 60 gallons is allowed where permitted within jurisdictions, provided such dispensing operations are conducted in accordance with the following:

Exception: Fueling from approved portable containers in cases of an emergency or for personal use.

1. Where required, the mobile fueling operator shall be required to obtain a permit with *the fire code official*.

2. The *operator* of a mobile fueling operation shall develop a written safety and emergency response plan that

   2.1. establishes policies and procedures for fire safety, spill prevention and control, personnel training and compliance with other applicable requirements of this code;

2.2. demonstrates readiness to respond to a fuel spill and carry out appropriate mitigation measures, and

2.3. describes the process to dispose properly of contaminated materials.

The plan shall be made available to the *fire code official* at the time of the vehicle registration with the *fire code official*. The plan shall be maintained and updated by the operator as needed and made available to the *fire code official* upon request.

3. Persons responsible for dispensing operations shall be trained in the appropriate mitigating actions in the event of a fire, leak or spill. Training records shall be maintained by the fuel dispensing company.

4. Dispensing shall be conducted using Safety cans shall be listed in accordance with UL 30 and a maximum capacity of 5 gallons are used in dispensing operations.

5. Fuel dispensing shall not take place within 15 feet (4572 mm) of buildings or storm drains.

Exceptions:

1. The distance to storm drains shall not apply where an approved storm drain cover or an approved equivalent that will prevent any fuel from reaching the drain is in place prior to fueling. Where placement of a storm drain cover will cause the accumulation of excessive water or difficulty in conducting the fueling, such cover shall not be used and the fueling shall not take place within 15 feet (4572 mm) of a drain.

2. The distance to storm drains shall not apply for drains that direct influent to approved oil receptors.

6. Mobile fuel delivery to vehicles located inside or on the roof level of parking structures or other buildings is prohibited.

Exception: When approved by the fire code official, mobile fuel delivery to vehicles located on the roof level of parking structures or other buildings may be allowed where there is exterior vehicular access from grade level.

7. Fuel deliver vehicle brakes shall be set and hazard lights shall be activated during dispensing operations.

8. The engines of the vehicles being fueled shall be shut off during dispensing operations.

9. Fuel dispensing shall be prohibited within 25 feet (7620 mm) of sources of ignition, including electrical, in accordance with 5003.7. Signs prohibiting smoking or open flames within 25 feet (7620 mm) of the service vehicle or the point of fueling shall be prominently

posted on not less than three sides of the vehicle including the back and both sides. The engines of vehicles being fueled shall be shut off during dispensing operations.

10. Nighttime fueling operations shall only take place in adequately lighted areas.

11. Operators of *fuel delivery vehicles* shall have in their possession at all times an emergency communication device to notify the proper authorities in the event of an emergency.

12. At least one portable fire extinguisher with a minimum rating of 40:BC shall be provided on the fuel delivery vehicle with signage clearly indicating its location.

13. Absorbent materials, nonwater-absorbent pads, an approved container with lid and a nonmetallic shovel shall be provided on the fuel delivery vehicle to mitigate a minimum 5-gallon (19 L) fuel spill.

14. A means shall be provided to prevent liquids spilled during dispensing operations from flowing into buildings or off-site. Acceptable methods include, but shall not be limited to, drop pans, absorbent pads and other approved means.

15. Any unauthorized discharge of motor fuel shall comply with Section 5003.3.1.

16. Mobile fueling operations shall be limited to times when the public is not present within 15 feet (4572 mm) of dispensing operations.

Section 6103.2.1 is amended by adding a new Section 6103.2.1.8 to read as follows:

6103.2.1.8 Jewelry Repair, Dental Labs and Similar Occupancies. Where natural gas service is not available, portable LP-Gas containers are allowed to be used to supply approved torch assemblies or similar appliances. Such containers shall not exceed 20- pound (9.0 kg) water capacity. Aggregate capacity shall not exceed 60-pound (27.2 kg) water capacity. Each device shall be separated from other containers by a distance of not less than 20 feet.

Section 6104.2 is amended by numbering the existing Exception as "1" and adding an Exception 2 to read as follows:

2. Except as permitted in Sections 308 and 6104.3.2, LP-gas containers are not permitted in residential areas.

Section 6104.3 is amended by adding a new Section 6104.3.2 to read as follows:

6104.3.3 Spas, Pool Heaters, and Other Listed Devices. Where natural gas service is not available, an LP-gas container is allowed to be used to supply spa and pool heaters or other listed devices. Such container shall not exceed 250-gallon water capacity per lot. See Table 6104.3 for location of containers.

Exception: Lots where LP-gas can be off-loaded wholly on the property where the tank is located may install up to 500 gallon above ground or 1,000 gallon underground approved containers.

Section 6107.4 is amended to read as follows:

6107.4 Protecting Containers from Vehicles. Where exposed to vehicular damage due to proximity to alleys, driveways or parking areas, LP-gas containers, regulators and piping shall be protected in accordance with Section 312.

Section 6109.13 is amended by deleting the "Exception."

Appendix M "High-Rise Buildings – Retroactive Automatic Sprinkler Requirement" of the Fire Code is adopted to read as follows:

APPENDIX M – HIGH-RISE BUILDINGS – RETROACTIVE AUTOMATIC SPRINKLER REQUIREMENT

M101.1 Scope. An automatic sprinkler system shall be installed in all existing high-rise buildings in accordance with the requirements and compliance schedule of this appendix.

M102.1 High-Rise buildings. An automatic sprinkler system shall be installed in accordance with Section 903.3.1.1 of the International Fire Code shall be provided throughout existing high-rise buildings.

Exceptions:

1. Airport traffic control towers
2. Open parking structures
3. Group U occupancies
4. Occupancies in Group F-2

M103.1 Compliance Schedule. Building owners shall file a compliance schedule with the fire code official not later than 365 days after the effective date of this code. The compliance schedule shall not exceed 12 years for an automatic sprinkler system retrofit.

SECTION 2. All provisions of the Ordinances of the City of Farmers Branch, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. Any person violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Farmers Branch as heretofore amended and, upon conviction, shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000.00).

SECTION 6. This ordinance shall take effect on the first day of the calendar month following its passage in accordance with the provisions of the charter and state law.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE 13th DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:11/29/16:81771)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3413

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Ordinance

Agenda Number: G.12

Consider adopting Ordinance No. 3413 approving the 2015 Texas Food Establishment Rules as amended; and take appropriate action.

BACKGROUND:

The City of Farmers Branch uses the Texas Food Establishment Rules (TFER) established by the Texas Department of State Health Services (DSHS) to regulate food service facilities (Sec. 26-151). Periodically DSHS updates these regulations. The latest update by the agency occurred in October 2015. Staff has reviewed the rule updates and amended them as needed. Some notable changes to the rules include regulations for the cottage food industry, posting requirements for Certified Food Manager cards, increased training for food handlers, and additional reporting for non-typhoidal Salmonella cases. All changes are developed to minimize the potential for foodborne illness and protect public health.

DISCUSSION:

The City of Farmers Branch staff have reviewed the updated TFER and propose to adopt the new TFER, with some modifications.

RECOMMENDATION:

City Administration recommends to adopt the new Texas Food Establishment Rules as amended.

POSSIBLE COUNCIL ACTION:
1. I move to approve Ordinance No. 3413
2. I move to approve Ordinance No. 3413, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Ordinance No. 3413

ORDINANCE NO. 3413

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING CHAPTER 26, ARTICLE V, ADOPTING THE TEXAS FOOD ESTABLISHMENT RULES, TEXAS ADMINISTRATIVE CODE TITLE 25, CHAPTER 228, ADOPTED BY THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES, EFFECTIVE OCTOBER 11, 2015, WITH AMENDMENTS, BY AMENDING SECTIONS 26-151 AND SECTION 26-152; BY AMENDING SECTION 26-154 TO ESTABLISH FEES FOR FOOD SERVICE ESTABLISHMENTS; BY ADDING SECTION 26-155 PROVIDING REGULATIONS FOR SEASONAL SNOW CONE MOBILE FOOD ESTABLISHMENTS; BY ADDING SECTION 26-156 TO PROVIDE REGULATIONS FOR SUMMER FOOD SERVICE PROGRAMS; BY ADDING SECTION 26-157 TO PROVIDE REGULATIONS FOR FARMERS MARKETS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS ($2,000.00); AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Chapter 26, Article V, Sections 26-151 and 26-152 of the Code of Ordinances be amended in part to adopt the Texas Food Establishment Rules codified at Texas Administrative Code Title 25 Chapter 228 adopted by the Texas Department of State Health Services effective October 11, 2015, with amendments to read as follows:

"Sec. 26-151. Adoption of Texas Food Establishment Rules

The Texas Food Establishment Rules codified at Texas Administrative Code Title 25 Chapter 228 adopted by the Texas Department of State Health Services effective October 11, 2015 with exception of such sections thereof as are hereinafter deleted, modified or amended pursuant to Section 26-152 are hereby adopted as the minimum standards for food service operations within the corporate limits of the city, and shall constitute regulations governing the preparation, service, and sale of food within the City. For purposes of this Division, the phrase "Food Establishment Rules" means collectively (i) the Texas Food Establishment Rules as adopted by this Section and (ii) the local amendments adopted pursuant to Section 26-152. The City Manager, or authorized

representative is hereby authorized and directed to enforce all provisions of the Food Establishment Rules."

"Sec. 26-152. Local Rules Adopted

For purposes of enforcement of the provisions of the Food Establishment Rules within the incorporated limits of the City, the following sections, paragraphs, and sentences of the Texas Food Establishment Rules are hereby amended as follows:

Section 228.2 "Definitions" is amended as follows:

A. The following definitions are added to read as follows:

Catering Operation - A food establishment that pursuant to a contract or agreement, prepares food in an approved facility and transports food in an approved manner to another location for final cooking or serving.

Certificate of Occupancy – A certificate of occupancy is a document issued by a local government agency indicating that a building complies with zoning and building laws.

Change of Ownership – A change of owner or operator of a food establishment business and does not refer to a change of the owner of the property or building in which the business is located or operated from.

Commissary Approval Letter - A written notarized statement provided by a central preparation facility, or commissary that displays the vehicle identification number of the mobile food establishment, and states that the mobile food establishment receives food, supplies, and/or cleaning and servicing from that facility.

Commissary – A licensed or permitted food establishment that provides the necessary support and required services to a mobile catering truck. A commissary can be a source for obtaining potable water, disposing of wastewater, storage for food and supplies as well as cooking facilities to prepare the food for sale and consumption.

Concession Stand – A food establishment operated on a seasonal basis for the purpose of providing food at sporting and special events associated with an independent school district, university, community college, non-profit organization, privately owned school, or the City of Farmers Branch.

Cottage Food Production Operation – An individual, operating out of the individual's home that is exempt from the requirements of a food service establishment who:

i. Produces a baked good, candy, coated and uncoated nuts, unroasted butter nuts, fruit butters, a canned jam or jelly, a fruit pie, dehydrated fruit or vegetables, including dried beans, popcorn and popcorn snacks, cereal, including granola, dry mix, vinegar, pickles, mustard, roasted coffee or dry tea, or a dried herb or dried herb mix.
ii. Has an annual gross income of $50,000 or less from the sale of the described foods and;
iii. Sells the foods produced directly to consumers at the individual's home, a farmer's market, a farm stand, or a municipal, county, or nonprofit fair, festival or event.
iv. Delivers products to the consumer at point of sale or another location designated by the consumer.
v. A cottage food production operation may not sell a potentially hazardous/time temperature control safety (PHF/TCS) food item to consumers.

Farmers Market – A designated location used primarily for the distribution and sale directly to consumers of food by farmers and other producers. A farmers market is not a food establishment and operates on a seasonal basis.

Farmers Market Vendor – Any person or persons who operate, offers, or sells food typically known as "farm grown", "farm originating", or "farm obtained" from a location approved on private or public property. Foods included in "farm grown" are whole produce, plants, nuts, certain meats, honey, egg, and pasteurized dairy products.

Fixed Commercial Location – A building that can obtain a certificate of occupancy that is not mobile in nature.

FRP Wallboard – Fiber reinforced polyester wallboard with a thickness of 3/32 inch or greater.

Gourmet Mobile Food Truck- A mobile food establishment upon which food is cooked, and packaged for service, sale, or distribution from a truck, bus, or trailer that specializes in gourmet cuisine, specialty items, or ethnic menus. Gourmet food trucks are not licensed as a regular mobile catering truck and operate only under a temporary food permit or seasonal food establishment permit in Farmers Branch or at a closed private event. All gourmet trucks involved with grease generating operations and having onboard foodservice equipment such as deep fat fryers, grills, and vent hoods shall have an approved fire suppression equipment installed which is inspected and passed yearly as mandated by the Farmers Branch Fire Marshall before being allowed to participate in any City public event. Gourmet food trucks must be inspected by the regulatory authority before participating in any public special events and must furnish proof of a current

certified food protection manager, notarized commissary approval letter, and a recent sanitation inspection report performed in a City, County, or State agency in which they are licensed in before participating in an event open to the public.

Heavy Food Preparation – Any food establishment area in which foods are prepared utilizing a grill, griddle, deep-fat fryer, commercial type oven; and/or any similar food preparation equipment, or any area which processes, or cuts time/temperature control (TCS) for safety food items and requires thorough cleaning and sanitizing. Examples of heavy preparation would be, but not limited to BBQ facilities with smokers, cafeterias, fast food restaurants, full service restaurants, meat and fish markets, donut shops, and pizza shops.

Light Food Service Preparation – Any food establishment area in which foods are prepared exclusive of the use of fryers, grills, grills, or other similar equipment. Light food preparation is usually limited to the preparation of hot dogs, sandwiches, salads, soups, fountain-type drinks and ice cream or other similar foods. Examples of light preparation would include yogurt, ice cream, sandwich shops, as well as limited concession stands.

Mobile Food Unit (cold truck) – A mobile food establishment which conveys food from an approved commissary or central preparation facility; and from which only prepackaged food in individual servings are sold or conveyed in such a manner that no direct food contact occurs.

Mobile Food Unit (hot food catering truck) – A mobile catering truck upon which food is stored, prepared, cooked, displayed, and packaged for service, sale or distribution. Hot food trucks with regular service routes are licensed in the City of Farmers Branch.

No Food Preparation – Any food establishment area in which foods are provided pre-wrapped, from an approved source with only a microwave type heating device used to heat food items that may require reheating. Examples of no preparation would be convenience stores or other types of stores such as novelty or sundry shops which sell candy, bottled beverages, and pre-packaged food items only.

Seasonal Permit – A permit which is issued to a food establishment, or farmers market that operates in a fixed location for more than fourteen (14) consecutive days, up to six (6) months.

Smoker – Any unit, whether mobile or fixed in nature, which uses wood or wood products to provide smoke for the purpose of slow cooking meats

intended for human consumption. Smokers must meet local zoning, building, and fire codes.

Snow Cones and Snow Cone Products – Any crushed or shaved ice product served in a single service container and topped with non-dairy flavored syrups.

Wholesome – In a sound condition, clean, free of adulteration, and suitable for human consumption. Pre-packaged food items shall be deemed wholesome if it meets the foregoing requirements and is used or sold prior to the "sell by" or expiration date on the package.

B. The following definitions are amended to read as follows:

Plumbing Code - The International Plumbing Code (IPC), 2012 edition, or the most current edition, as adopted by the City of Farmers Branch, and published by the International Code Council as amended by 16 TAC § 70.101.

Regulatory or Health Authority – The City of Farmers Branch, the person or department to whom the City may delegate the enforcement responsibility of the food code.

Temporary food establishment - A food establishment that operates for a period of no more than fourteen (14) consecutive days (or for such other time as is authorized by the City Council) in conjunction with a single event or celebration, and written consent to operate is obtained from the private or public property owner on which said temporary food establishment will operate. Temporary food establishments may include food vendor pushcarts, concession stands, and mobile gourmet food trucks."

Section 228.33(b) is amended to read as follows:

"(b) The required certified food protection manager or managers of a food establishment will be required to register with the City of Farmers Branch as a food protection manager by providing to the regulatory authority a copy of the original food protection manager's training certificate from an Accredited Program in which the applicant has passed, filling out the required City registration form, and paying the required fee. The Farmers Branch food protection manager's certificate shall then be posted in in a location in the establishment that is conspicuous to consumers."

Section 228.39(b) is amended to read as follows:

"(b) A food employee may not wear fingernail polish, fingernail adornments, or embellishments such as sequins or artificial nails while working with exposed foods even if wearing food handling gloves."

Section 228.65(a)(2) is amended to read as follows:

"(2) Except when washing fruits and vegetables or as specified under subsection (4)(A) and(B) of this section, food employees may not contact exposed, ready-to-eat food items with their bare hands whether or not they are serving a highly susceptible population and shall use suitable utensils such as deli tissues, spatulas, tongs, single-use gloves, or other dispensing utensils."

Section 228.65(5) (A) - (G) is deleted.

Section 228.68(g)(1) is amended to read as follows:

"(1) A take-home food container may not be returned to a food establishment to be refilled with food. All take-home containers for food products must be single service, non-returnable. A take-home container for beverages only may be refilled with a beverage providing all the criteria is met in Section 228.68(3) and (5)."

Section 228.70 (c) (1)-(3) is amended to add subsection (4) to read as follows:

"(4) Food Display. Freshly prepared time/temperature control for safety (TCS) food items for the sole purpose of replenishment shall not be added to and/or mixed in with existing or remaining time/temperature control for safety food items that are displayed on buffets, steam tables, or salad chill units. Any remaining containers or pans of food items on display are to be removed and discarded in their entirety before replacing with freshly prepared food items."

Section 228.70 (a)-(e) is amended to add the following subsections (f) and (g) to read as follows:

"(f) Ice. Ice shall be protected from contamination by consumers. Ice for consumer use shall be dispensed only by employees, unless the ice is in an enclosed self-dispensing ice machine with a chute where contact with the ice cannot occur such as a soda fountain dispensing machine. Employees shall dispense ice using only ice scoops, tongs, or other ice dispensing utensils or through automatic service of ice dispensing equipment. Ice dispensing utensils shall be stored on a clean surface or stored inside a bucket of sanitizer out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. At no time shall any items be stored in the ice storage bin due to potential contamination of the ice. Ice storage bins are required to be drained through an air gap which meets the current plumbing code. Ice storage bin interiors that includes the interior ceiling, sides, mice guard, and chute shall be cleaned and sanitized at least weekly to prevent build-up of mold and slime.

(g) Hot Dog Grills. Food establishments such as convenience stores that sell mainly pre-packaged food items, but do grill hot dogs using a portable commercial hot dog grill are required to place the grill at the service counter within reach of the clerk so the clerk can dispense hot dogs to the consumer. Self-service of hot dogs by the consumer is prohibited."

Section 228.75 (i) (3)-(4) is deleted.

Section 228.81(1)-(4) is amended by adding subsection (5) to read as follows:

"(5) Whenever the regulatory authority observes or discovers any food or drink displayed for sampling or sale that is unwholesome or unsafe for human consumption the regulatory authority shall order that food or drink destroyed or removed. The owner or responsible person in charge shall immediately remove or destroy such unwholesome or unsafe food items at his or her own expense. Destruction may include placing the unwholesome or unsafe food item or items in a proper outside covered waste receptacle and pouring liquid bleach on the food item to render food inedible."

Section 228.150(d) is amended to read as follows:

"(d) Grease traps shall be required for all heavy and some light food preparation establishments with equipment such as griddles, deep fat fryers, and grills in which grease is generated. Grease traps shall be sized and installed according to the most recent edition of the International Plumbing Code as adopted by the City of Farmers Branch. Grease traps shall be located to be easily accessible for cleaning, and shall be located outside of the building to prevent odor and potential contamination of the food service facility. All food establishments requiring a grease trap shall enter into a contract with a waste hauler licensed by the state regulatory having authority over waste haulers, to provide for regularly scheduled service. All grease traps must be serviced effectively and frequently enough to maintain these traps in satisfactory working order and to protect the City sanitary sewer system from stoppage or from excessive contaminants. Service records of such grease traps shall be maintained on the premises and made available to the regulatory authority upon request for inspection."

Section 228.173 (a) is amended to read as follows:

"(a) Cleanability. The floors, floor coverings, walls, wall coverings and ceilings especially in the food preparation, dishwashing, bar and service areas shall be designed and constructed so they are smooth, non-absorbent, and easily cleanable, except that anti-slip floorcoverings or applications may be used for safety reasons. Floors shall be free of cracks, chips holes, and deterioration. The regulatory authority shall require repair of any floor which fails to meet the requirements of this section. Food establishments involved in heavy or light food preparation shall incorporate quarry tile, cement-based terrazzo tile, or sealed concrete or equivalent

floor covering as approved by the regulatory authority. Coated, sealed concrete must be durable with the coating or sealant remaining intact and not subject to peeling or wearing away in order to prevent the concrete from absorbing liquids and food spills and must be approved by the regulatory authority.

(1) Toilets. Toilet room floors must meet the conditions set forth above.

(2) Walk-in coolers. Food establishments shall install in the cooler either stainless steel, sealed concrete, quarry tile flooring or an equivalent material as approved by the regulatory authority.

(3) Dry storage areas. All food establishments with dry storage must meet the conditions set forth above in section (a). "

Section 228.173 (f) (1)-(3) is amended to read as follows:

"(1) Food preparation areas. Food establishments involved in heavy and light food preparation shall install wall surfaces of FRP, ceramic tile, certain types of bricks sealed with light-colored epoxy paint or equivalent materials as approved by the regulatory authority in all food preparation, dishwashing and utensil washing areas, and service areas. Wall surface must extent 8 feet in height or to the ceiling if the ceiling height is less than 8 feet. Stainless steel shall be required in heavy food preparation areas behind the stove or range, grills, and fryers from floor to ceiling. The regulatory authority shall require durable and cleanable walls surfaces in areas exposed to excessive splash back of debris in establishments not involved in food preparation. Walls shall be smooth, durable, nonabsorbent and shall be maintained in a condition that facilitates thorough and rapid cleaning and shall be free of cracks, chips, holes and deterioration. The regulatory authority shall require repair or replacement of any wall which fails to meet the requirements of this section.

(A) Surface mounted pipes shall not be installed tightly against the surface of the walls. There shall be a gap of at least 2 inches between the pipe and the finished surface of the wall.

(B) All holes cut into walls and ceilings for pipes and conduits shall be sealed, and the clearance between the floor surface and the bottom edge of a door shall be tight fitting.

(C) In addition, doors and walls on all sally ports or backbay exterior areas off the food preparation area shall be free of gaps, holes, or openings, and doors shall be flush against the floor to exclude access by insects or rodents. Weather stripping may be used to seal any openings between the doors and the floor.

(2) Toilet rooms. Food establishments involved in heavy and light food preparation where the employee restroom is located in close proximity or off the food preparation area shall install FRP, ceramic tile, certain types of brick sealed with light-colored, enamel or epoxy paint, or equivalent materials as approved by the regulatory authority. Wall surfaces must extend 4 feet in height with the remainder consisting of any light-colored, smooth, washable material. Wall surfaces in any restrooms of establishments that are not involved in any food preparation shall be of any smooth, light colored, washable material as approved by the regulatory authority. Public access shall not be allowed through the food service preparation

to the rest rooms; in such cases where the rest rooms are located off the food preparation area and are accessible to employees only signage shall posted in a conspicuous location informing customers "Rest rooms are available for employees only". Solid self-closing doors are required on all food establishment rest rooms. A covered waste receptacle is required in the women's rest room and in the men's rest room if a diaper changing area is available. A sign must be posted in all public and employees rest rooms stating "Employees must wash hands before returning to work".

(3) Walk-in coolers. Wall surfaces shall be smooth, easily cleanable and capable of withstanding effects of low temperature and moisture without deteriorating. Shelving racks shall be stainless steel, epoxy-coated, corrosion-resistant metal, durable, cleanable, hard acrylic plastic, or equivalent as approved by the regulatory authority.

(4) Dry food storage area. Shelving shall be light-colored, epoxy or enamel sealed painted wood if the storage area is not subjected to moisture, or durable, cleanable, hard acrylic plastic shelving. If paint or sealant is used on wooden shelving where food or single service containers are stored the paint or sealant must be food grade approved and be free from flaking, chipping, or peeling. Bare wood or particle board racks or shelving is not allowed for the storage of food items especially for foods that could spill or leak into the wood.

(5) Ceilings. Ceilings shall be of light color, smooth, relatively non-absorbent, durable and easily cleanable. Ceiling materials may be washable drop-in panels, vinyl coated gypsum panels, taped and bedded sheetrock with light-colored epoxy or enamel paint, or an equivalent material as approved by the regulatory authority. The regulatory authority shall require repair or replacement of any ceiling which fails to meet the requirements of this section.

(6) Food preparation, bar, and service areas. Food contact surfaces shall be stainless steel with the exception of certain polymer cutting boards. Customer service counters, food packaging areas, take-out a material windows and similar areas shall be surfaced with a material that is smooth, non-absorbent, durable, and easily cleanable as approved by the regulatory authority. Soft drink syrup canisters or bags shall be situated on six-inch high corrosion-resistant racks or within corrosion-resistant pans with one-inch curbs. Cabinets, tables, or similar equipment shall not be made of wood, particle board, or covered in Formica if subject to moisture. Curtains used for privacy or to segregate bars, or food serving areas such as dining rooms cannot be made of absorbable non-cleanable woven fabric in order to prevent the accumulation of food debris on the material.

(7) Foodservice equipment. All foodservice equipment shall be commercial grade, approved by the national Sanitation Foundation (NSF) for its intended use and shall be maintained in a condition that facilitates thorough and rapid cleaning. Residential food service equipment is not allowed in commercial food preparation areas. The regulatory authority shall require repair or replacement of any equipment which fails to meet the requirements of this section."

Section 228.175 is amended by adding subsections (g) and (h) to read as follows:

"(g) Handwashing Sink Devices. No devices such as an eye wash apparatus or a hand operated spigot mounted from the faucet in order to activate the water will be attached to the handwashing sink. Hand sinks must be operated in accordance with the requirements under §228.146(1),(2),(3), and (4). Foot operated pedals for hand sinks will be allowed providing all the requirements under the above entitled section §228.146 (1),(2),(3), and (4) are met. An eye wash station if required, may be mounted separately and independently from the hand wash sink and all plumbing fixtures connected to the hand sink.

(h) Handwashing Sinks Prohibited Storage. No items shall be stored in the handwashing sink basin or on the ledge of the hand sink to prevent potential contamination of the sink. In addition, the sink is to be kept free from dirt, mold, and slime build-up."

Section 228.221 (a)-(k) is amended by replacing (a)-(k) with a new subsection (a) (1)-(3) titled "Special requirements for catering vehicles (cold trucks)" and a new subsection (b) (1)-(12) titled "Special Requirements for mobile food preparation vehicles (hot trucks)" to read as follows:

"(a) Special requirements for non-food preparation catering vehicles (cold trucks)

(1) Packages containing time/temperature control for safety (TCS) foods shall be sealed, properly labeled and dated with the date of preparation of the food. All potentially hazardous food shall be disposed of at the end of each day of operation.

(2) If food is purchased from a licensed restaurant for resale from the mobile food catering vehicle, the restaurant must be licensed with the Texas Department of State Health Services Food Manufacturing Division as a food manufacturer. The mobile food vendor must maintain a copy of the restaurant's food manufacturer license on file in the mobile food preparation vehicle in order to be authorized to sell food prepared from the restaurant

(3) Beverages not provided in individual containers shall be dispensed from stainless steel covered urns or similar type equipment from the mobile food preparation vehicle. Beverages shall be added to the urns only at a commissary or other approved establishment.

(4) A schedule of at least two (2) stops where food will be sold from the mobile catering vehicle, including locations and exact times for each stop in the City of Farmers Branch, shall be submitted at the time of application for a mobile catering vehicle permit. Any changes in the schedule must be reported to the regulatory authority not later than three (3) days prior to such change becoming effective. Failure to maintain a current schedule of stops within the City may result in suspension of the permit to operate within the City.

(b) Special Requirements for mobile food preparation catering vehicles (hot trucks)

(1) Base of operations. Mobile food preparation vehicles shall be parked at the base central preparation facility/commissary when not in actual operation.

(2) Food Protection Manager. A current certified food protection manager who has registered with the City is required to be onboard a mobile hot truck during the time the truck is in service. The Farmers Branch food protection manager's certificate is to be kept onboard and be made available to the regulator authority upon request.

(3) Construction. All surfaces located in the food preparation area of the mobile food preparation vehicle shall be constructed of stainless steel or equivalent material. Construction joints and seams shall be sealed. The juncture between the floor and walls shall be sealed or have adequate space to clean. Space around pipes, conduits, or hoses that enter through cabinets, floors or outer walls shall be sealed. There shall be an unobstructed height over the aisle-way portion of the unit of at least seventy-six inches (76") from floor to ceiling, and a minimum of thirty-six inches (36") of unobstructed horizontal aisle space.

(4) Equipment. A three-compartment sink and hand washing sink shall be provided. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, but shall in any case be not less than twelve inches (12.0") long, twelve inches (12.0") wide, and ten inches (10.0") deep. Drain boards shall be not less than twelve inches (12.0") long by twelve inches (12.0") wide. Equipment for cooling and heating food, as well as for holding hot and cold food, shall be sufficient in number and capacity to provide food temperatures as specified under Subchapter C of this code. No re-usable dishware can be provided to customers, only single services articles.

(5) Service Openings. Service openings shall not exceed 216 square inches each. Service openings may be no closer than eighteen inches (18.0") apart. Service openings shall be constructed with screen doors which shall remain closed except when serving food to customers through the opening. Screens of not less than 16 mesh per inch shall be used. All food service operations shall be conducted inside the preparation area of the mobile food preparation vehicle.

(6) Power Supply. Whenever the mobile food preparation vehicle is in service, adequate electrical power shall be provided to operate the approved exhaust, lighting and refrigeration systems, and any other accessories and appliances that may be installed on a mobile food preparation vehicle.

(7) Water Supply, Plumbing. All equipment used on the mobile food preparation vehicle for a potable water supply system shall be listed for such use by an organization acceptable to the regulatory authority. A water supply tank of sufficient capacity (but in no case less than thirty (30) gallons) to furnish an adequate quantity of potable water for food preparation, cleaning, and hand washing purposes must be provided. A water inlet tank shall be19.1 mm (3/4inch) in inner diameter or less. Hose-connection valves must be of a size or type that will prevent its use for any other service and shall be not less than five feet (5.0') above the ground and be covered at all times with a protective, screw-type cap which is attached to the mobile food preparation vehicle. The water system shall deliver not less than one (1.0)

gallon per minute to each sink basin in the mobile food preparation vehicle. The fill hose and water holding tank shall be labeled as “Potable Water”. A water heater with a minimum capacity of ten (10) gallons, or an instantaneous heater capable of producing water of 120 degrees Fahrenheit interconnected with the potable water supply, shall be provided and shall heat the water independently of the vehicle engine.

(8) Liquid Waste. A liquid waste tank having a capacity at least fifty percent (50%) greater than the fresh water tank shall be provided and labeled as “waste water”. The tank shall be sized to receive and be adequate to hold melting ice water resulting from one day's operation. All waste lines shall be connected to the waste tank with watertight seals and all connections on the vehicle for servicing the mobile truck waste facilities shall be of a different size or type than those used for supplying potable water. The water supply tank shall be filled and the waste storage tanks shall be emptied only at the commissary or other facility approved by the regulatory authority. Wastewater from the toilet shall be held separate from other wastewater on the mobile food preparation vehicle.

(9) Safety. An approved automatic fire extinguishing system shall be provided over cooking surfaces that require mechanical exhaust ventilation. A fire suppression system and fire extinguisher is required for all mechanical vent hood systems with grilling and deep fat frying operations and is to be inspected annually as mandated by the Farmers Branch Fire Marshall. Covers for deep fat fryers shall be provided and installed over fryer units while the mobile food preparation vehicle is in motion. Seats designated for the cook and each passenger shall be provided on each mobile food preparation vehicle and shall be located outside of the food preparation area. A physical separation shall be provided between the food preparation area and the cab area of the mobile food preparation vehicle. No food preparation shall be allowed while the mobile food preparation vehicle is in motion. Violation of any provision this paragraph (8) shall be grounds for the immediate suspension of the mobile food permit by the regulatory authority for a period not to exceed ninety (90) days.

(10) Restroom. Each vehicle shall be provided with an employee restroom that is physically separated from the food preparation area. The restroom shall be supplied with an operational hand sink with hot and cold water and soap and paper towels.

(11) Schedule. A complete schedule of stops including locations and exact times for each stop within the City shall be submitted at the time of application for a mobile food preparation vehicle permit. Any changes in the schedule shall be reported to the regulatory authority not later than three (3) days prior to such change becoming effective. Failure to maintain a current schedule of all stops may result in suspension of the permit to operate within the City.

(12) Special Rules for Mobile Food Establishment and Catering Vehicles. Every permit granted for operation of a Mobile Food Establishment or Catering

Vehicle shall be conditioned upon compliance by the recipient of such permit with the following:

(A) The operator of a mobile food establishment shall not conduct business on any property unless permission for conducting such business has first been granted in writing by the owner of the property or an authorized agent for the owner and a copy of such written permission is maintained in the vehicle.

(B) Mobile food establishment shall not stop on unimproved property or the City right of way for the purpose of selling and/or serving food or other products or goods.

(C) Sale of products and services from a mobile food establishment shall be limited to persons employed by the business or businesses operating on the property on which the vehicle has legally stopped, and all sales to drive-up customers shall be prohibited.

(D) Each stop made by a mobile food establishment for the purpose of sales or service of goods shall be limited to a maximum duration of thirty (30) minutes, and the total cumulative time during which a vehicle may provide sales or service shall not exceed two (2) hours at any single location within any twenty-four (24) hour period."

Section 228.244 (a) (1)-(6) is amended by replacing (a) (1)-(6) to read as follows:

"(a) Review of plans.

(1) Whenever a food establishment is constructed or extensively remodeled or whenever an existing structure is converted to use as a food establishment, or the nature of the operation changes, or the menu is changed to include more or different items properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review before work begins. Such plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical schematic, and construction of materials of work areas, and the type and model of proposed fixed equipment types including dimensions and installation specifications. The plans and specifications shall be approved by the regulatory authority if they meet the requirements of the rules adopted by this ordinance. The approved plans and specifications must be followed in construction, remodeling or conversion.

(2) A Farmers Branch Food Establishment Plan Review document will be filled out and reviewed by the regulatory authority for each new food establishment facility or each extensively remodeled facility and shall include the following:

(A) Intended menu items

(B) Anticipated volume of food to be stored, prepared, and sold or served

(C) List of equipment and usage

(3) Any food establishment which closes for business for a period of 30 days or more, and was grandfathered under a previously existing food code

requirement that has since been repealed must be brought into compliance under the current Texas Food Establishment Rules as adopted by the City of Farmers Branch with regard to overall facilities, structure, and equipment before reopening as a food establishment and shall be approved by the regulatory authority.

(4) Failure to construct or remodel the food establishment in accordance with the approved plans and specifications shall result in a denial, suspension or revocation of a food establishment permit.

(5) Whenever plans and specifications are required by this section to be submitted to the regulatory authority, the regulatory authority shall inspect the food establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of the current Food Establishment Rules as adopted by the City.

(6) For purposes of this subsection, "extensive remodeling" means that 20% or greater of the area of the food establishment is to be remodeled."

Section 228.247 is amended to read as follows:

"(a) Permit Required. A person shall not operate a food establishment without a valid permit to operate issued by the regulatory authority.

(b) Permit Application. Any person desiring to operate a permanent, temporary, seasonal or vehicle mounted food establishment within the City shall make written application for a permit on forms provided by the regulatory authority. The application shall include such information as the regulatory authority determines is necessary for the enforcement the current Food Establishment Rules.

(c) Permit Fees. The various requirements for permits and such administrative functions of this division shall require the payment of fees to the City in an amount that is set by the Health Department and approved by resolution of the City Council. Fees are not refundable. (See Appendix A).

(d) Multiple Locations. If an applicant operates at multiple locations, a separate permit application and the payment of a separate fee will be required at each location.

(e) Shared/Multi Use Kitchens. A single operating permit shall be issued to one food establishment owner or food production company in a fixed commercial location and allows for food production by that applicant only the operating permit cannot be used for the purposes of shared/multi use kitchens within that building, or for the purpose of subletting space in that building to other food production establishments or companies.

(f) The food establishment operating permit shall be posted in a conspicuous location to consumers.

(g) Additional responsibilities of the permit holder:

(1) If required to operate under a HACCP plan, the permit holder is to comply with the written plan as specified in §228.244(c) of this title which includes the information specified in §228.244(b) of this title as is relevant to the variance requested.

(2) Immediately contact the regulatory authority to report an illness of food employee as specified under §228.35(2) of this title relating to management and personnel.

(3) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard exits because of an emergency such as fire, flood, extended interruption of electrical or water service, back-up issue, misuse of a poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health.

(4) Allow the regulatory authority access to the food establishment under §228.250(b) of this title.

(5) Replace existing facilities and equipment specified in 228.241 of this title with facilities and equipment that comply with these rules if the regulatory authority directs replacement because facilities and equipment constitute a health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted, or the facilities and equipment are replaced in the normal course of operation, or the regulatory authority directs the replacement of equipment and facilities because of change of ownership.

(6) Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies.

(7) Accept notices issued and served by the regulatory authority according to law.

(8) Be subject to administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with these rules or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(9) Notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers or by another method acceptable to the regulatory authority.

(h) Exemptions.

(1) Public schools accredited with the State of Texas shall be exempt from the payment of permit fees requirement to operate food establishments.

(2) Church kitchens where food is prepared and served to members only and child care centers licensed by the State of Texas shall be exempt from the permit requirements to operate food establishments.

(3) Permit Term. Permits for food establishments, excluding temporary and seasonal snow cone type food establishments, shall be valid for one year from the date issued by the City unless suspended or revoked. Permits must be renewed on an annual basis by filing a permit renewal application and payment of the required fee with the regulatory authority.

(4) Temporary Food Establishment Permit Term. Permits for temporary food establishments shall be valid for no more than fourteen (14) consecutive days, except when the City Council authorizes the establishment to operate for a different period of time, in which case the permit shall be valid for the time authorized by the City Council. Permits for temporary food service establishments that are NOT operating in conjunction with a City of Farmers Branch sponsored special event or community based event shall be limited to six (6) permits a year. There is no fee charged for a temporary food establishment permit.

(5) Term for Seasonal Snow Cone Type Food Establishment. Permits for seasonal snow cone type food establishments shall be valid for the lesser of the time approved by the City Council in a Specific Use Permit - Interim Use; or Six (6) to twelve (12) months from the date issued.

(6) Mobile Food Preparation Vehicle Permits. Upon issuance of a permit for operation of a Mobile Food Catering Vehicle, the regulatory authority shall affix to the vehicle a sticker bearing the expiration date of the permit. This sticker shall be prominently displayed at all times. The permit shall be renewed annually from the date in which it is issued.

(7) Ice Cream Push Carts Prohibited. Ice cream push carts are prohibited from operating within the City. The regulatory authority is hereby authorized to impound ice cream push carts operating within the City. The food contained within the ice cream push cart, if not immediately removed by the vendor, and if from an approved source and in sound condition, may be stored at a City facility for a maximum time of seventy-two (72) hours, after which time the food shall be destroyed. A $50.00 transport and storage fee shall be paid to the City by vendors who reclaim food from a City facility within the allotted time period.

(i) Exemptions from Catering Permits. Food establishments that currently operate a permanent food establishment within the City and possesses a valid food permit issued by the regulatory authority may, at the discretion of the regulatory authority, be exempted from the requirement to obtain a food permit for catering operations at other locations within the city.

(j) Issuance of Permit. The regulatory authority shall issue a permit to the applicant after inspection reveals that the proposed food service establishment complies with the requirements of the Texas Food Establishment Rules.

(k) Permit Suspension for Imminent Hazard to Public Health. The regulatory authority may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required in this subsection of this ordinance. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within twenty (20) days of receipt of a request for a hearing.

(l) Permit Revocation. The regulatory authority may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the regulatory authority in the

performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

(m) Notice. A notice as required in these Food Establishment Rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority. The hearings provided for in these Food Establishment Rules shall be conducted by the regulatory authority at a time and place designated by the regulatory authority. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority."

SECTION 2. Chapter 26, Article V, Section 26-154 of the Code of Ordinances be amended in part to amend the regulations governing fees to read as follows:

"Sec. 26-154. - Fees

(a) A fee as listed in Appendix A of this Code shall be paid by each applicant for review of food service establishments.

(b) A permit fee shall not be required from any applicant to operate a temporary food service establishment or a food stand at the Farmers Market.

(c) A permit fee shall be paid by each applicant to operate a mobile catering food establishment, which includes hot and cold catering vehicles. The fee shall be determined by the type of vehicle operated as listed in The Farmers Branch Code of Ordinances, Appendix A

(d) A permit fee shall be paid by each applicant to operate a brick and mortar fixed food service establishment. The fee shall be determined by the number of employees employed at the establishment listed in The Farmers Branch Code of Ordinances, Appendix A.

(e) A fee as listed in the Farmers Branch Code of Ordinances, Appendix A of this Code shall be paid by each applicant for issuance of any duplicate permit.

(f) A fee shall be paid by each applicant to register as a food protection manager as listed in the Farmers Branch Code of ordinances, Appendix A.

(g) A transport and storage fee of $50.00 shall be paid to the City by push cart ice cream vendors who reclaim their confiscated product from a City facility within the maximum holding time period of up to seventy-two (72) hours."

SECTION 3. Chapter 26, Article V, of the Code of Ordinances be amended to add section 26-155 to provide regulations for season snow cone mobile food establishments to read as follows:

“Sec. 26-155 - Seasonal Snow Cone Mobile Food Establishments.

(1) Operation. A seasonal permit may be obtained for food establishments at which only snow cone related foods shall be prepared or offered for sale. The preparation or sale of any time/temperature control for safety (TCS) foods at such establishments is prohibited.
(2) Ice. Ice to be used for snow cones shall be obtained in chipped, crushed, cubed or block form and in single-use safe plastic bags filled and sealed at the point of manufacture. Snow cone ice shall be held in its sealed bags until the ice is dispensed in a way that protects the ice from contamination.
(3) Equipment. A three-compartment sink and hand washing sink shall be provided. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, but shall in any case be not less than twelve inches (12.0”) long, twelve inches (12.0”) wide, and ten inches (10.0”) deep. Drain boards shall be not less than twelve inches (12.0”) long by twelve inches (12.0”) wide.
(4) Service Openings. Service openings for a snow cone establishment shall be constructed with screen doors which shall remain closed except when serving customers through the opening. Screens of not less than 16 mesh per inch shall be used.
(5) Water Supply, Plumbing. All equipment used for a potable water supply system shall be listed for such use by an organization acceptable to the regulatory authority and shall be installed and operated according to law. All potable water not provided directly by pipe to the establishment from an approved source shall:

(A) Be transported in a bulk water transport system or individual containers and delivered by direct connection to a closed-water system, or be delivered to a closed-water system by direct hose attachment from an approved water source.
(B) All potable water containers or hoses shall be used only for water supply purposes.
(C) A closed-water system of sufficient capacity to furnish an adequate quantity of potable water for cleaning and handwashing purposes, but in no case less than fifteen (15) gallon capacity tank, shall be provided and labeled “Potable water”. An instantaneous water heater system capable of producing water with a temperature of 120 degrees Fahrenheit interconnected with the potable water supply shall be provided.
(D) The water system shall be capable of delivering a water supply under pressure of at least fifteen (15) pounds per square inch (psi) at all times. If such water pressure cannot be provided by gravity flow, then a tank and a pump or other means, which will provide said fifteen (15) psi shall be installed.
(E) Liquid Waste. If the snow cone type establishment is not connected to a public sanitary sewer system, all liquid waste from the operation shall be held in an approved permanently installed liquid waste retention tank which shall be labeled “waste water”. The liquid waste tank shall have a capacity at least fifty percent (50%) greater than the potable water tank. All waste lines shall be properly installed and connected to the liquid waste tank with watertight seals. The liquid waste discharge pipe from the holding tank shall not be located inside the building. There shall be separate size fittings required between water supply and liquid waste connections. All liquid waste from the holding tank shall be transported and disposed of in an approved manner.
(F) Employee Restrooms. Snow cone type establishments shall have adequate, conveniently located, and accessible toilet and lavatory facilities for use by its employees at all times. If such facilities are not located within the establishment, they must be located within a 400-

foot radius of the establishment to be considered convenient use. If restrooms are located off-site, a notarized letter must be submitted with the permit application giving written permission for the food establishment's personnel to use such restroom facilities and acknowledging that the restrooms will be available for use at all times during the food establishment's business hours.

(G) Garbage: An easily cleanable, covered trash container shall be provided on the outside of the building if outside seating is provided."

SECTION 4. Chapter 26, Article V, of the Code of Ordinances be amended to add section 26-156 to provide regulations for summer food service programs to read as follows:

"Sec. 26-156 – Summer Food Service Programs.

(a) Any qualified charitable or governmental organization wishing to conduct a summer food service program in the City shall prepare and serve food from a commercial permanent kitchen in a non-residential facility authorized by a food establishment permit. The regulatory authority may authorize a permit for a kitchen in the City that provides, at a minimum, mechanical refrigeration, hot and cold running water under pressure for hand sinks, a three compartment sink equipped with dual drain boards, a mop sink onsite, restroom facilities, and approved finish materials in food preparation and service areas.

(b) Notification. The Farmers Branch regulatory must be notified in writing prior to operations as is required by the Texas Department of Agriculture and United States Department of Agriculture (TDA/USDA). This notice shall include the name and address of the food establishment preparing the food, the name of the person in charge, the site and address where the food is to be distributed, the dates and times of the operation, and a list of the food and beverages to be served. A current Food Protection Manager must be in place during the time the food items are being prepared. If the food establishment preparing the food is not located in Farmers Branch, then a copy of that facility's current health permit as well as a copy of the most current health inspection report conducted by the City, or County the facility is located in must be furnished to the regulatory authority upon giving notice they will be participating in the Summer Feeding program.

(c) Food. All food items used in the Summer Food Service Program must come from an approved source. All foods must be packaged in individual containers at the permitted food preparation facility. Bare-handed food contact is not allowed. All foods requiring time/temperature control for safety must be maintained at the proper temperatures of 41 degrees F. or below or 135 degrees F. or above. The use of warmers, mechanical refrigeration, or cold packs are permitted to keep foods at the required temperatures. A stem thermometer shall be used and kept onsite to ensure received food items meet the required temperatures. Additionally, a temperature log must be maintained onsite for recording these temperatures.

(d) Facilities. All food must be served in an acceptable eat-in facility such as a club house, lunch room, or cafeteria with access to handwashing rest room facilities unless otherwise approved by the regulatory authority."

SECTION 5. Chapter 26, Article V, of the Code of Ordinances be amended to add section 26-157 to provide regulations governing farmers markets to read as follows:

"Sec. 26-157 – Farmers Market.

(a) Farmers Markets. Permits. A health permit must be filled out by each food vendor and be approved by the regulatory authority. Permits are not transferable. The permit must be visibly displayed at each booth. Failure to comply with these requirements may result in the revocation of the permit/and or municipal court citations.

(b) Foods. All foods sold at the Farmers Branch farmer's market must fall under one of the following categories:

(1) Produce which must be sold in a whole state

(2) Manufactured foods with a license from the Department of State Health Services (DSHS)

(3) Commercially produced pre-packaged items from a licensed facility or commissary

(A) Commercially Pre-Packaged Foods. Only commercially prepared pre-packaged goods prepared in a certified commercial kitchen and labeled according to the manufactured food requirements of the Texas Department State of Health Services (DSHS) will be allowed.

(B) Labels must include the manufacturer, common name of the food item, ingredients if more than one, the name of the food source for each major food allergen contained in the food, unless the food source is already part of the common name of the respective ingredient and approximate net weight. In addition, a nutrition label must also be included on the packaging.

(C) Absolutely no unlabeled foods, or foods from any source other than the documented commissary may be sold to the public.

(D) All food must be sold retail only. Without proper wholesale licenses, sales to restaurants are prohibited.

(c) Cottage Food Producers. Cottage food producers can only sell the following:

(1) Baked goods, breads, sweet baked goods, cakes such as birthday or wedding cakes without time/temperature control for safety food ingredients or icings, rolls, muffins, coated and uncoated candy, a canned jam or jelly, a fruit pie, dehydrated fruits or vegetables, including dried beans, popcorn, and popcorn snacks, cereal, including granola mix, vinegar, pickles made from cucumbers only, mustard, roasted coffee, or dried tea, or a dried herb mix.

(2) All cottage food produced items must be labeled legibly with the following:

(A) The name and address of the cottage food production operation

(B) The common or usual name of the product especially if the food is made with a major food allergen such as nuts, eggs, soy, milk, or wheat

(C) A statement that says: "This food is made in a home kitchen and is not inspected by the Department of State Health Services (DSHS) or a local health department.

(d) Manufactured Products. All vendors selling time/temperature control for safety (TCS) food items such as meat, eggs, or milk will be required to have mechanical refrigeration to keep the product at the required cold holding temperatures. All meat will be frozen at 0 degrees F., whole shell eggs at 45 degrees F. or below and milk at 41 degrees F. or below.

(1) Egg products. An egg producer that sells only ungraded eggs from their own flock may be exempt from licensing from the Texas Department of Agriculture, but must be

permitted by the Department of State Health Services (DSHS) or the local regulatory authority.

(A) The eggs must be stored under mechanical refrigeration at 45 degrees F. or less, and meet specific labeling requirements. (Safe Food Handling Instructions; Name and Address of distributor or packer)

(B) Eggs from fowl other than chickens such as quail and ducks are not graded in Texas and cannot be sold.

(2) Meat products. Only frozen packaged meat will be allowed. All meat must come from an approved source United Sates Department of Agriculture (USDA) stamp or Department of State Health Services (DSHS) – Meat and Safety Assurance.

(A) All meat items must be stored and displayed in a mechanical freezer approved by the City of Farmers Branch Environmental Health Department.

(B) All labeling requirements must comply with USDA and DSHS rules and regulations.

(C) The processing plant must be USDA inspected unless it has a small producer exemption. A small producer must provide proof of exemption and meet labeling requirements. The producer shall provide either a grant of inspection or exemption.

(D) The meat storage facility must provide proof that it is a licensed facility under the Department of State Health Services (DSHS).

(1) If the meat is stored in a facility other than the processing plant, a copy of the latest health inspection must be provided to the local regulatory authority.

(E) The following must be provided to the City of Farmer Farmer's Market:

(1) Completed Farmers Branch permit application

(2) Equipment inspection

(3) Processing license (or proof of exemption)

(4) Storage license

(5) Copy of product labels

(3) Milk products. Fluid milk and milk products complying with Grade A will be obtained pasteurized. Raw unpasteurized milk will not be allowed.

(e) Sampling. Sampling may be allowed if the following requirements are met:

(1) All food items are covered and protected from contamination, access by insects, and served in a sanitary manner by the use of utensils. All samples must be served in single service sample cups with single service utensils if needed.

(2) All food items must be stored at least 6 inches up off the ground.

(3) All food items must be able to be served without cooking. Cooking of a raw food product will not be allowed. Examples of approved samples would be candy, granola, salsas on commercially bagged chips or bagel bits, baked goods, cookies, muffins, and jellies on bread, dehydrated fruit or vegetables, coated and uncoated nuts, brewed coffees, and teas.

(4) Commercially prepared products such as corn dogs, hot dogs, and tamales may be given as samples if the items are fully cooked and only need to be re-heated. Proper re-heating equipment such as grills will have to be provided.

(5) All sellers handing out samples would be required to wear proper hair restraints, properly wash hands, and to wear food handler gloves.

(6) Sellers must refrain from chewing gum, eating, or drinking from open spill-able beverage containers while giving out samples.

(7) All cutting surfaces must be smooth, easily cleaned and non-absorbent. Re-useable utensils should be sanitized in a household unscented bleach solution at 50 parts per million (ppm), or quaternary ammonium (QUAT) at 200 ppm. Sanitizer test strips must be provided for the sanitizer being used.

(8) All solid and liquid waste must be properly disposed of as needed. All food waste should be disposed of in a trash receptacle with tight fitting lids and liquid waste into an approved sewer or holding tank.

(9) A hand sink with hot and cold water, paper towels, and soap will be available onsite, but it is recommended that all vendors handing out samples also have one durable container with a spigot containing free flowing potable water, hand washing soap, paper towels, and a collection container for waste water. Note: Hand sanitizers do not take the place of hand washing, but may be used in conjunction with proper hand washing, and if only handing out prepackaged food items.

(10) Small children and toddlers are not allowed inside the sampling booths.

(11) Animals must be kept on leashes and away from the food sampling stands unless the samples are pet foods or pet treats. The exception to this is a service dog."

SECTION 6. All provisions of the ordinances of the City of Farmers Branch in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Farmers Branch not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 7. Should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 8. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 9. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 10. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THIS THE 13th DAY OF DECEMBER, 2016.

ATTEST: **APPROVED:**

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(PGS:12-1-16:TM 81496)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-104

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: G.13

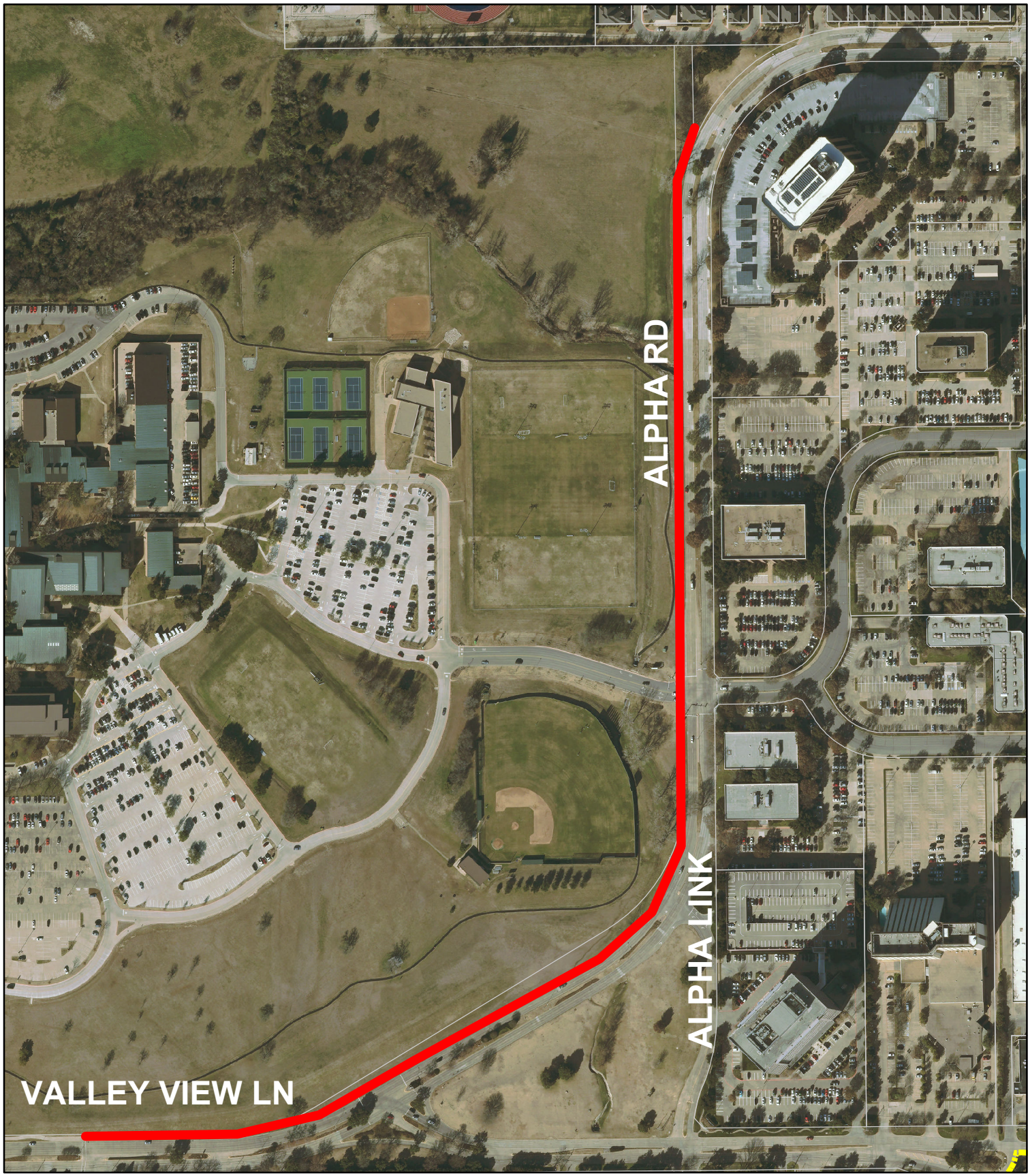
Consider approving Resolution No. 2016-104 authorizing acceptance of a sidewalk and pedestrian access easement from Dallas County Community College District related to the bicycle and pedestrian trail system; and take appropriate action.

BACKGROUND:
As part of Phase One trail implementation Dallas County Community College District (DCCCD) has agreed to convey to the City of Farmers Branch a sidewalk and pedestrian access easement needed for the expansion of the bicycle and pedestrian trail system. The project requires permanent easements to be granted from the property owner of 3939 Valley View Lane. City staff proposes to construct a public sidewalk for pedestrian and non-motorized means of transportation along the boundary of the Brookhaven College campus.

RECOMMENDATION:
City Administration recommends approving Resolution No. 2016-104 authorizing acceptance of a public sidewalk and pedestrian easement from DCCCD for the construction of a bicycle and pedestrian trail along the boundary of the Brookhaven College campus. Funding for the proposed project is available through the Capital Improvement Program fund.

POSSIBLE COUNCIL ACTION:
1. I move to approve Resolution No. 2016-104 authorizing acceptance of a public sidewalk and pedestrian easement from DCCCD related to the City's bicycle and pedestrian trail system.
2. I move to approve Resolution No. 2016-104 authorizing acceptance of a public sidewalk and pedestrian easement from DCCCD related to the City's bicycle and pedestrian trail system, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Aerial Location Map
2. Resolution No. 2016-104
3. Trail Connectivity Map



FARMERS BRANCH

LOCATION MAP

NORTH

Date: 11/30/2016

Document Path: G:\0B-CAD & GIS\GIS\2-City Trails & Sidewalk System\Location Map rosser-Alpha.mxd

RESOLUTION NO. 2016-104

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING ACCEPTANCE OF A SIDEWALK AND PEDESTRIAN ACCESS EASEMENT FROM DALLAS COUNTY COMMUNITY COLLEGE DISTRICT RELATED TO THE CITY'S BICYCLE AND PEDESTRIAN TRAIL SYSTEM; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Dallas County Community College District has agreed to convey to the City of Farmers Branch an easement needed for the expansion of the City's bicycle and pedestrian trail system along the boundary of the Brookhaven College campus; and

WHEREAS, the City Council of the City of Farmers Branch, Texas, finds it to be in the public interest to accept said easement over the property described herein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Manager is hereby authorized to accept, on behalf of the City of Farmers Branch, the sidewalk and pedestrian access easement substantially in the form set forth in Attachment "A," attached hereto and incorporated herein by reference, and record said easement in the Official Public Records of Dallas County, Texas.

SECTION 2. This resolution shall become effective immediately upon final passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS THE 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:11/6/16:81184)

RESOLUTION NO. 2016-104
ATTACHMENT "A"

After Recording, Return to:
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

SIDEWALK AND PEDESTRIAN ACCESS EASEMENT

THE STATE OF TEXAS §
§ KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF DALLAS §

Dallas County Community College District ("DCCCD" or "Grantor"), a political subdivision of the State of Texas, for the sum of One Dollar ($1.00) and other good and valuable consideration in hand paid to Grantor by or on behalf of Grantee, does hereby give, convey, and dedicate to the **City of Farmers Branch**, a Texas home rule municipality, for and on behalf of the public ("City" or "Grantee"), a non-exclusive easement ("the Easement") over, under, across and upon a portion of that certain lot, tract or parcel of land situated in the City of Farmers Branch, Dallas County, Texas more particularly described in **Exhibit "A"** and depicted in **Exhibit "B"** (collectively "Easement Property") attached hereto and incorporated herein by reference, for the purpose of allowing pedestrians and others travelling by bicycle and other non-motorized means of transportation the right of ingress, egress, and regress across the Easement Property, and to construct, reconstruct, maintain, repair replace, and remove all improvements determined by Grantee necessary for the establishing of such "bicycle and pedestrian" trail ("the Easement Purpose")

Grantor covenants that, at the time of execution of this Easement, Grantor is the owner of the Easement Property, and has the right to convey the Easement, and that title to the Easement Property is free and clear of any encumbrances which would interfere with the ability to grant the Easement for the Easement Purpose.

Grantor further agrees that access to and from the remainder of the tract of land of which the Easement Property is a part shall not be denied. Grantor retains all rights to the Easement Property, provided that Grantor's exercise of such rights does not interfere with Grantee's or the public's rights under this Easement to use the Easement Property for the Easement Purpose.

TO HAVE AND TO HOLD the above described Easement, together with all and singular the rights and appurtenances thereto in anywise belonging unto City, its successors and assigns

forever, in perpetuity. Grantor binds Grantor and Grantor's successors and assigns to Warrant and Forever Defend all and singular the Easement and Easement Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise, and subject to all of the following provisions, with which Grantor and Grantee agree and covenant to observe and comply:

1. Grantor reserves unto itself, its successors and assigns, the right to use and enjoy Grantor's adjacent land for any lawful purposes, provided that such use does not unreasonably interfere with the exercise by Grantee of the rights hereby granted.

2. Grantee shall, at all times and at its own expense, be responsible for maintaining, repairing and replacing any and all improvements constructed on the Easement Property in order to facilitate the Easement Purpose including, but not limited to, all pavement, curbs, signs, lighting, bridge structures, benches, and associated appurtenances.

3. The Easement and all of the terms, provisions and obligations hereof are binding upon the parties, their successors and assigns.

4. The person and officer signing below on behalf of Grantor represents and warrants that he has the authority, respectively, to execute this instrument on behalf of Grantor.

SIGNED this ____ day of _____, 201__.

Dallas County Community College District
a Political Subdivision of the State of Texas

By: _____
Joe May, Chancellor

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Acknowledged before me, the undersigned authority, this ___ day of _____, 201__, by Joe May, Chancellor of Dallas County Community College District, a junior college district and political subdivision of the State of Texas, for and on behalf of said district.

_____
Notary Public, State of Texas
Commission Expires:_____

RESOLUTION NO. 2016-104
ATTACHMENT "A"

ACCEPTED AND AGREED this ____ day of _____, 201__.

City of Farmers Branch,
A Texas home rule municipality.

By:_____
Charles S. Cox, City Manager

State of Texas §
§
County of Dallas §

Acknowledged before me, the undersigned authority, this _____ day of _____, 2016, by Charles Cox, City Manager, City of Farmers Branch, a Texas home rule municipality, for and on behalf of said municipality.

_____
Notary Public, State of Texas
Commission Expires:_____

RESOLUTION NO. 2016-104
ATTACHMENT "A"

Exhibit "A"
Description of Easement Property

EXHIBIT "A"
Sidewalk and Pedestrian Access Easement Part 1
Legal Description

Being a permanent Sidewalk and Pedestrian Access Easement situated in the Noah Good Survey, Abstract No. 520, City of Farmers Branch, Dallas County, Texas and being part of the DCCCD Brookhaven College Addition, an addition to the City of Farmers Branch, Dallas County, Texas as recorded in the Map Records of Dallas County, Texas, Instrument No.200900266486, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with cap stamped "NDM" (controlling monument) found at the northeast corner of said DCCCD Brookhaven College Addition, and at the most northerly terminus of the west right-of-way line of Alpha Road (a 40 foot wide right of way at this point) as dedicated by said addition, same being in the south line of Cambridge Crossing Addition Phase 2, an addition to the City of Farmers Branch, as shown on the plat recorded in Instrument No. 201100142408, Map Records, Dallas County, Texas, from which a 5/8 inch iron rod with yellow cap stamped "HUITT ZOLLARS" found bears South 89 degrees 22 minutes 45 seconds West, a distance of 456.50 feet;

THENCE, South 00 degrees 38 minutes 52 seconds East, departing said north line of DCCCD Brookhaven College Addition, along said dedicated west right of way line of Alpha Road (a 40 foot wide right of way at this point), a distance of 251.87 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for the **POINT OF BEGINNING** for the herein described easement on the west right of way line of said Alpha Road (an 80 foot wide right of way at this point);

THENCE, South 00 degrees 38 minutes 52 seconds East, continuing along said west right of way line, a distance of 1,549.62 feet to a 1/2 inch iron rod with plastic cap stamped "NDM" (controlling monument) found for corner and the beginning of a tangent curve to the right,

THENCE along said west right-of-way line of Alpha Road, along said curve to the right, having a delta angle of 22 degrees 28 minutes 34 seconds, a radius of 395.00 feet and a long chord that bears South 10 degree 35 minutes 25 seconds West, a distance of 153.96 feet, and an arc length of 154.95 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE, North 68 degrees 10 minutes 18 seconds West, departing the west right of way line of said Alpha Road, a distance of 10.00 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner and the beginning of a non-tangent curve to the left;

THENCE, along said curve to the left having a delta angle of 22 degrees 28 minutes 34 seconds, a radius of 385.00 feet and a long chord that bears North 10 degrees 35 minutes 25 seconds East, a distance of 150.06 feet, and an arc length of 151.03 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 00 degrees 38 minutes 52 seconds West, a distance of 126.77 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 35 degrees 38 minutes 27 seconds West, a distance of 43.59 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 00 degrees 38 minutes 52 seconds West, a distance of 184.00 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 15 degrees 08 minutes 10 seconds East, a distance of 91.91 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 00 degrees 38 minutes 52 seconds West, a distance of 554.69 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE South 89 degrees 21 minutes 08 seconds West, a distance of 5.00 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 00 degrees 38 minutes 52 seconds West, a distance of 50.00 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 89 degrees 21 minutes 08 seconds East, a distance of 5.00 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 00 degrees 38 minutes 52 seconds West, a distance of 510.00 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 89 degrees 21 minutes 08 seconds East, a distance of 10.00 feet to the **POINT OF BEGINNING**, and containing 23,428 square feet or 0.538 acres of land, more or less.

EXHIBIT "A"
Sidewalk and Pedestrian Access Easement Part 2
Legal Description

Being a permanent Sidewalk and Pedestrian Access Easement situated in the Noah Good Survey, Abstract No. 520, City of Farmers Branch, Dallas County, Texas and being part of the DCCCD Brookhaven College Addition, an addition to the City of Farmers Branch, Dallas County, Texas as recorded in the real property records of Dallas County, Texas, Instrument No.200900266486, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with cap stamped "NDM" (controlling monument) found for the southwest corner of said DCCCD Brookhaven College Addition, same being at the intersection of the east right-of-way line of Mash Lane (a variable width right-of-way) and the north right-of-way line of Valley View Lane (a variable width right-of-way);

THENCE, along the south line of said DCCCD Brookhaven College Addition and the existing north right-of-way line of said Valley View Lane, the following three (3) courses and distances:

> North 89 degrees 40 minutes 12 seconds East, a distance of 1,174.92 feet to a 1/2 inch iron rod with a plastic cap stamped "NDM" (controlling monument) found for corner;
>
> North 60 degrees 38 minutes 23 seconds East, a distance of 41.65 feet to a 1/2 inch iron rod with plastic cap stamped "NDM" (controlling monument) found for corner;
>
> North 89 degrees 20 minutes 17 seconds East, a distance of 291.58 feet to an "X" cut set for the **POINT OF BEGINNING** for the herein described easement;

THENCE North 00 degrees 39 minutes 43 seconds West, departing the existing north right-of-line of said Valley View Lane, a distance of 10.00 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE North 89 degrees 20 minutes 17 seconds East, a distance of 785.37 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner and the beginning of a tangent curve to the left;

THENCE, along said tangent curve to the left, having a delta angle of 23 degrees 51 minutes 47 seconds, a radius of 414.33 feet and a long chord that bears North 77 degrees 24 minutes 35 seconds East, a distance of 171.32 feet and an arc length of 172.56 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner;

THENCE South 24 degrees 31 minutes 18 seconds, East, a distance of 10.00 feet to a 5/8 inch iron rod with plastic cap stamped "LTRA" set for corner on the south line of said DCCCD Brookhaven College Addition and on the existing north right-of-way line of said Valley View Lane, same being the beginning of a non-tangent curve to the right;

THENCE along the south line of said DCCCD Brookhaven College Addition and the existing north right-of-way line of said Valley View Lane, along said non-tangent curve to the right, having a delta angle of 23 degrees 54 minutes 07 seconds, a radius of 424.33 feet and a long chord that bears South 77 degrees 25 minutes 43 seconds West, a distance of 175.74 feet and an arc length of 177.02 feet to a concrete monument with brass disk stamped "DCCCD" (controlling monument) found for corner;

THENCE South 89 degrees 20 minutes 18 seconds West, a distance of 785.09 feet the **POINT OF BEGINNING**, and containing 9,601 square feet or 0.220 acres of land, more or less.

I, Stanley M. Brewer, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that the land description and plat represent an actual survey made on the ground under my supervision.

Stanley M. Brewer 11-28-2016

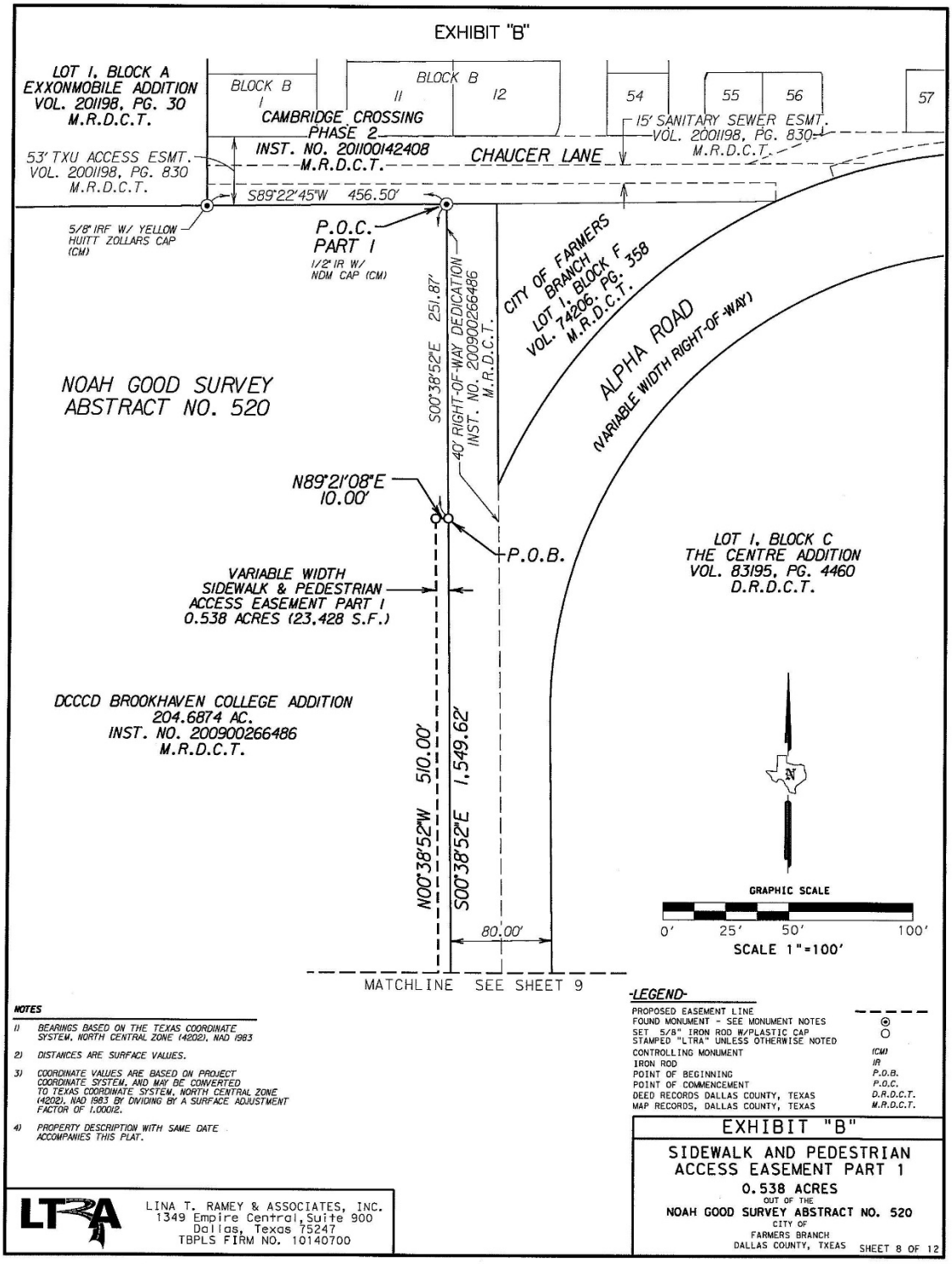
Stanley M. Brewer, R.P.L.S. Date
Texas Registration No. 6072

STATE OF TEXAS
REGISTERED
STANLEY M. BREWER
6072
PROFESSIONAL
LAND SURVEYOR

Lina T. Ramey & Associates, Inc.
3320 Belt Line Road
Farmers Branch, Texas 75234
Ph. 214-979-1144
TBPLS Firm Registration No. 10140700

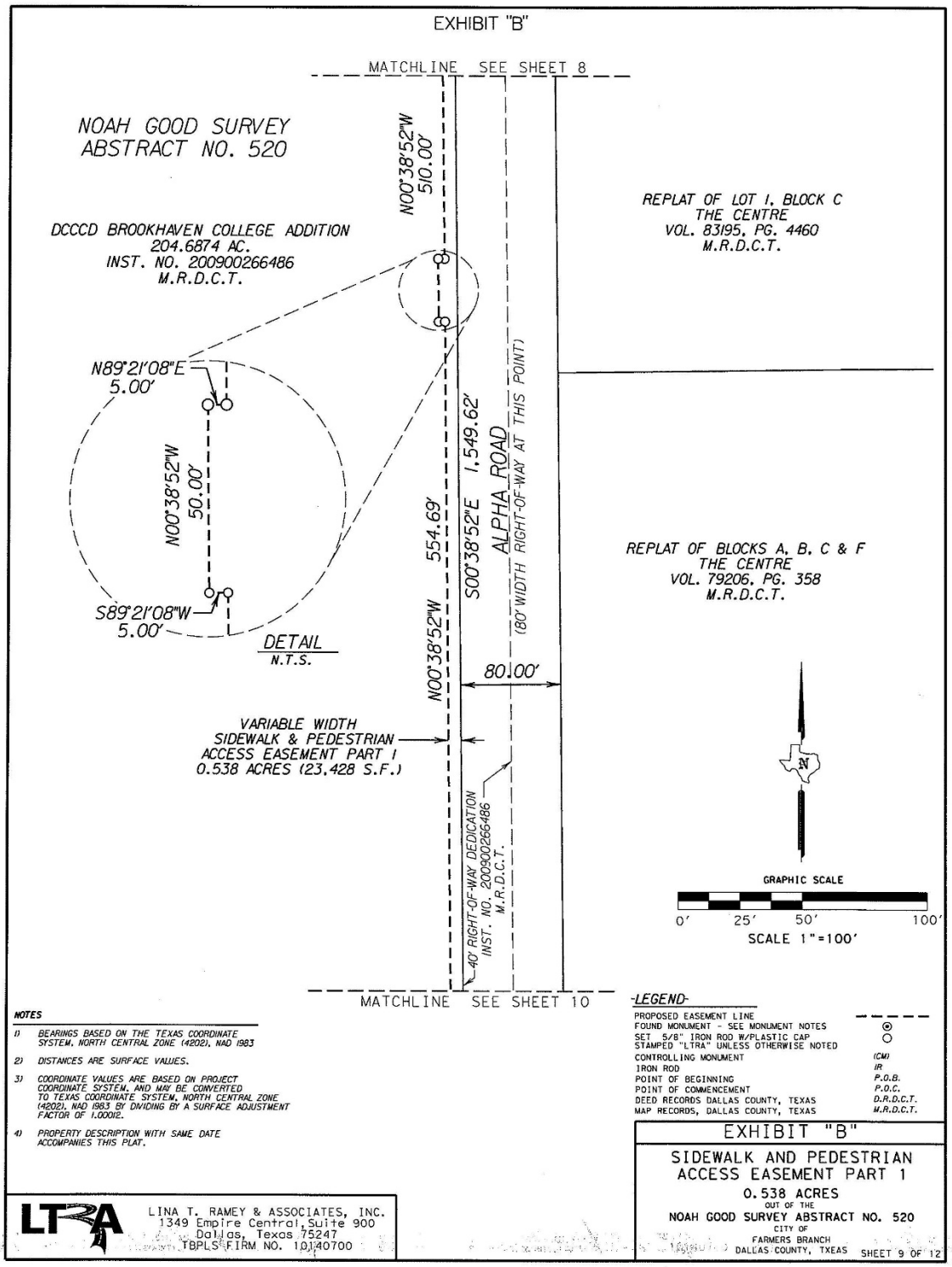
RESOLUTION NO. 2016-104
ATTACHMENT "A"

Exhibit "B"
Depiction of Easement Property



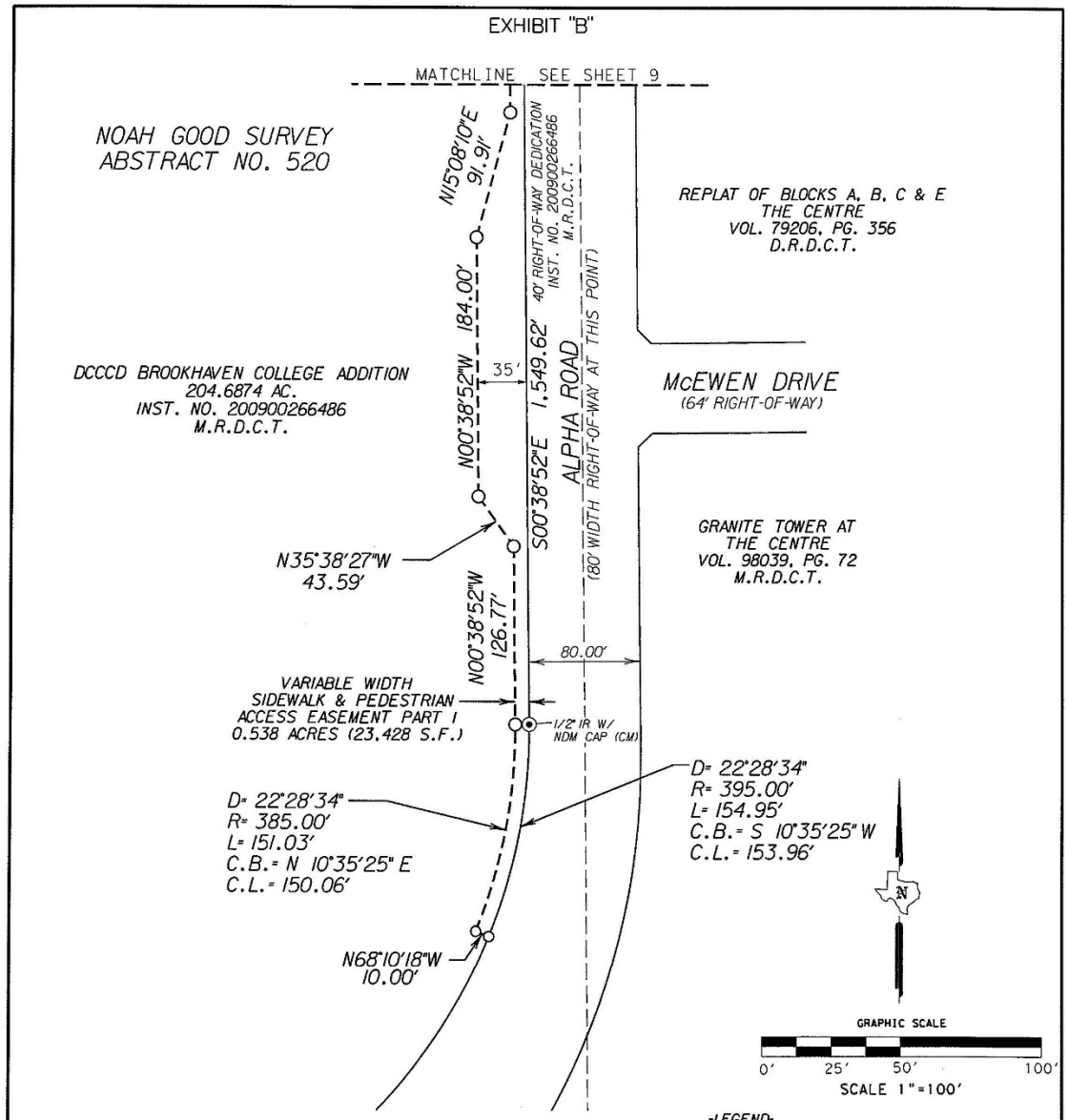
(kbl 10/18/16:80705)

RESOLUTION NO. 2016-104
ATTACHMENT "A"



(kbl 10/18/16:80705)

RESOLUTION NO. 2016-104
ATTACHMENT "A"



NOTES

1) BEARINGS BASED ON THE TEXAS COORDINATE SYSTEM, NORTH CENTRAL ZONE (4202), NAD 1983

2) DISTANCES ARE SURFACE VALUES.

3) COORDINATE VALUES ARE BASED ON PROJECT COORDINATE SYSTEM, AND MAY BE CONVERTED TO TEXAS COORDINATE SYSTEM, NORTH CENTRAL ZONE (4202), NAD 1983 BY DIVIDING BY A SURFACE ADJUSTMENT FACTOR OF 1.00012.

4) PROPERTY DESCRIPTION WITH SAME DATE ACCOMPANIES THIS PLAT.

-LEGEND-

PROPOSED EASEMENT LINE	
FOUND MONUMENT - SEE MONUMENT NOTES	⊙
SET 5/8" IRON ROD W/PLASTIC CAP STAMPED "LTRA" UNLESS OTHERWISE NOTED	○
CONTROLLING MONUMENT	(CM)
IRON ROD	IR
POINT OF BEGINNING	P.O.B.
POINT OF COMMENCEMENT	P.O.C.
DEED RECORDS DALLAS COUNTY, TEXAS	D.R.D.C.T.
MAP RECORDS, DALLAS COUNTY, TEXAS	M.R.D.C.T.

LTRA

LINA T. RAMEY & ASSOCIATES, INC.
1349 Empire Central, Suite 900
Dallas, Texas 75247
TBPLS FIRM NO. 10140700

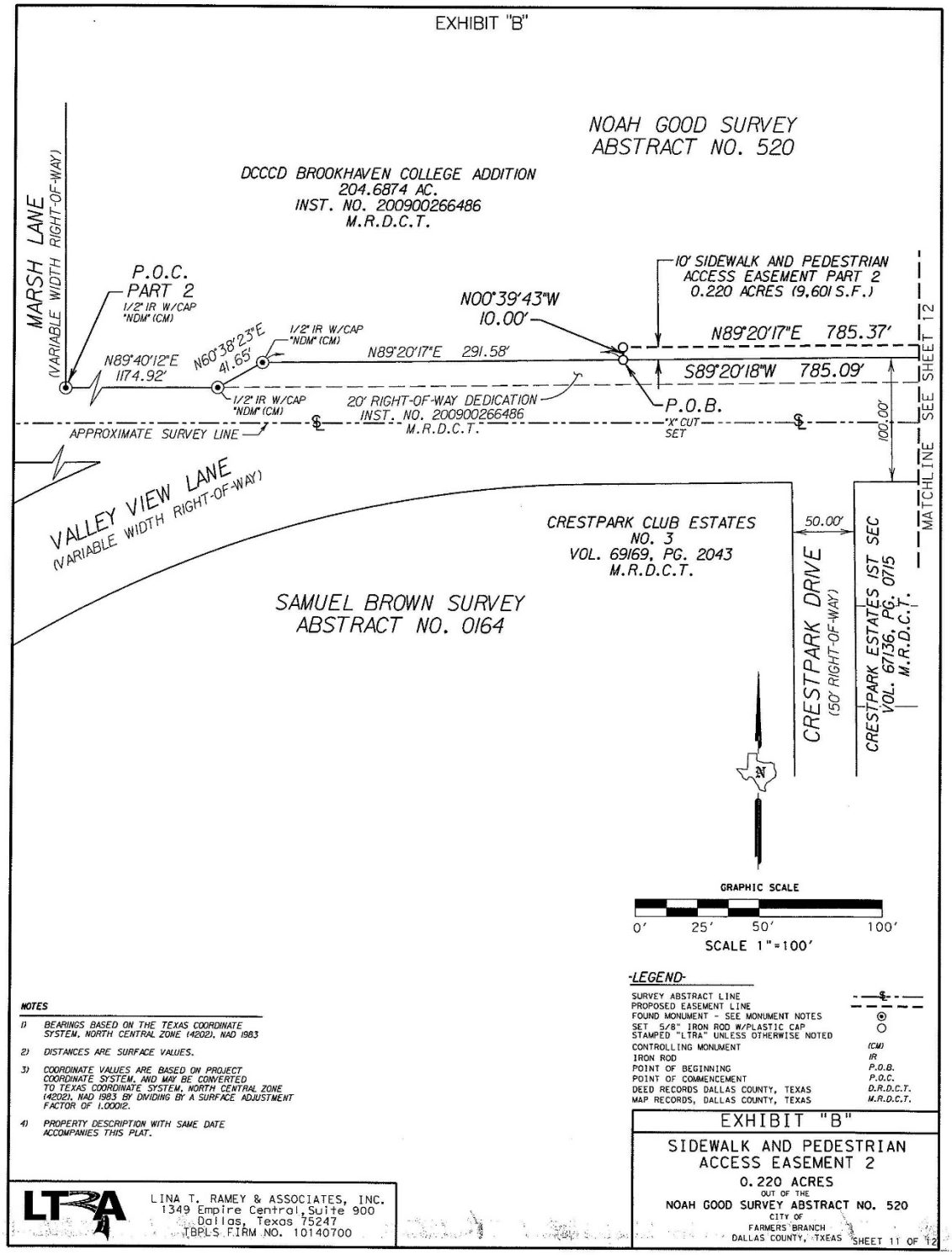
EXHIBIT "B"

SIDEWALK AND PEDESTRIAN
ACCESS EASEMENT PART 1
0.538 ACRES
OUT OF THE
NOAH GOOD SURVEY ABSTRACT NO. 520
CITY OF
FARMERS BRANCH
DALLAS COUNTY, TXEAS

SHEET 10 OF 12

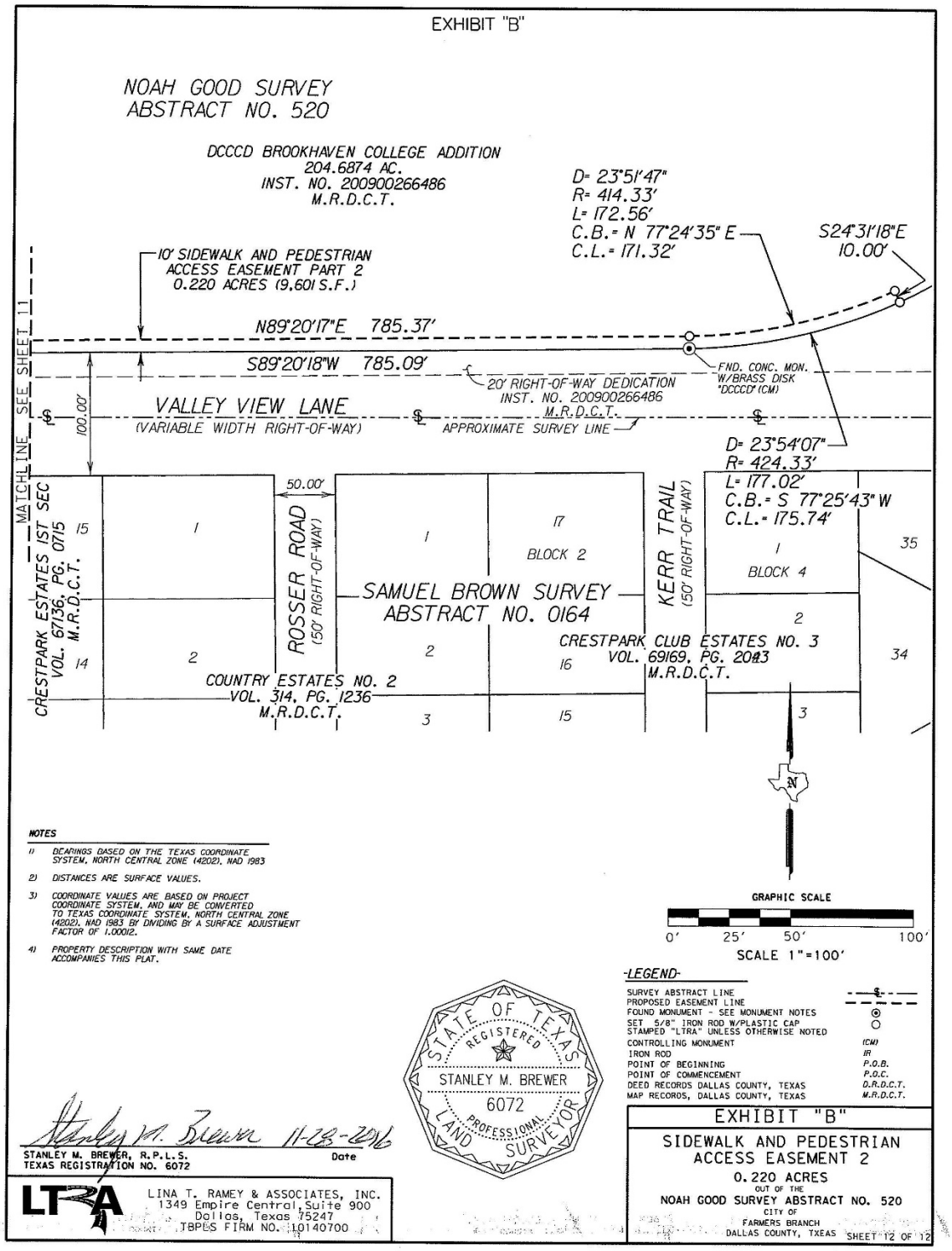
(kbl 10/18/16:80705)

RESOLUTION NO. 2016-104
ATTACHMENT "A"



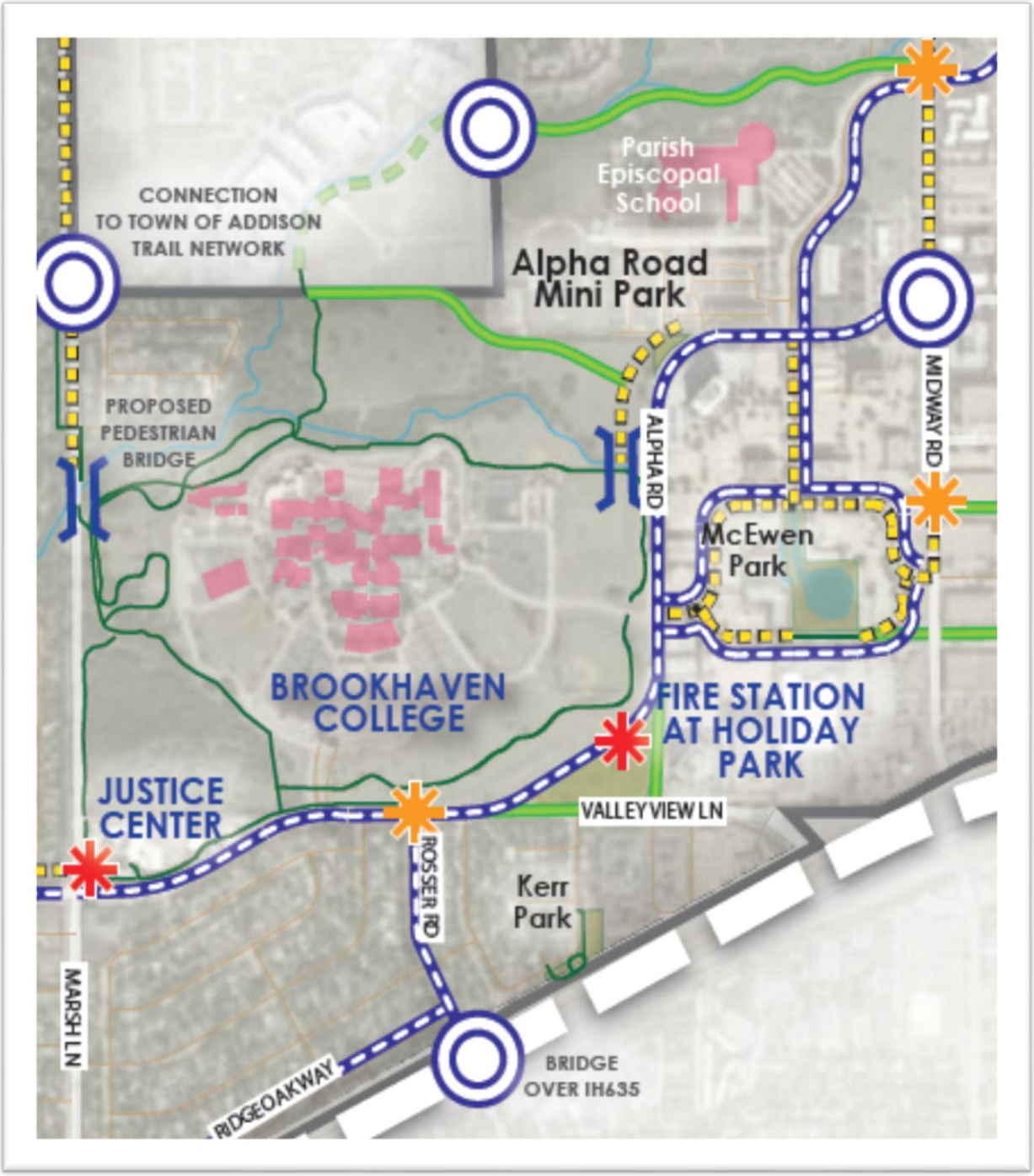
(kbl 10/18/16:80705)

RESOLUTION NO. 2016-104
ATTACHMENT "A"



(kbl 10/18/16:80705)

Trail Connectivity



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-115

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: G.14

Consider approving Resolution No. 2016-115 authorizing the City Manager to execute a professional services agreement with Weaver Consultants Group, LLC for Phase E of the landfill gas collection system at Camelot Landfill for the design, permitting, and construction quality assurance; and take appropriate action.

BACKGROUND:
The City owns and is the permit holder for the Camelot Landfill, and therefore accepts municipal solid waste for disposal. Over time, organics in the waste stream decompose resulting in the production of landfill gas. Currently landfill gas is collected from the decomposing waste material disposed at the site and combusted in either a landfill gas to energy plant or a flare. The collection and combustion of landfill gas minimizes the potential for odors from the site, controls a potential source of groundwater contamination, and provides revenue to the City via the landfill gas to energy facility.

Recent landfill development and meteorological events have necessitated the installation of additional landfill gas wells and associated collection lines to continue site operations in compliance with the facility permit and state regulations. This will be the fourth expansion of the landfill gas collection system.

DISCUSSION:
Weaver Consultants Group, LLC has the personnel and experience to design landfill gas collection systems. They provide this service for many clients in the Dallas-Ft. Worth region. Moreover, the firm designed all four of the previous landfill gas collection system installations and improvements and provided construction quality assurance during those projects. Funds were appropriated for the project during the 2016-2017 Fiscal Year Budget.

RECOMMENDATION:
City Administration recommends awarding the design and construction quality assurance of Phase D of the landfill gas collection system at Camelot Landfill to Weaver Boos Consultants, LLC - Southwest in the amount of $143,491.

POSSIBLE COUNCIL ACTION:
1. I move to approve Resolution No. 2016-115 authorizing the City Manager to execute a professional services agreement for the design and construction quality assurance for Phase E of landfill gas collection system at Camelot Landfill.
2. I move to approve Resolution No. 2016-115 authorizing the City Manager to execute a

professional services agreement for the design and construction quality assurance for Phase D of landfill gas collection system at Camelot Landfill, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Resolution No. 2016-115
2. Professional Services Agreement

RESOLUTION NO. 2016-115

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING AN AGREEMENT WITH WEAVER CONSULTANTS GROUP, LLC FOR PROFESSIONAL ENGINEERING AND SURVEYING SERVICES FOR RELATING TO PHASE E OF THE LANDFILL GAS COLLECTION SYSTEM EXPANSION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, having previously contracted with the predecessor to Weaver Consultants Group, LLC)("Engineer") as an independent contractor to provide professional engineering and surveying services associated with expansion of the landfill gas collection system and the City's landfill, City Administration desires and recommends the engagement of Professional to perform the design and construction services for the next phase of said system; and

WHEREAS, the City Council of the City of Farmers Branch finds it in the public interest to concur in the foregoing recommendation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Manager is hereby authorized to negotiate and sign on behalf of the City of Farmers Branch an agreement with Weaver Consultants Group, LLC for professional engineering and surveying services relating to the design and construction services for Phase E of the Camelot Landfill Gas Collection System, with the cost of such services not to exceed $143,491.00 and to sign such change orders with respect to said contract as the City Manager determines to be in the public interest and in compliance with applicable city policy and state law..

SECTION 2. This Resolution shall become effective immediately upon passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____

Amy Piukana, City Secretary

APPROVED:

_____

Bob Phelps, Mayor

APPROVED AS TO FORM:

_____

Peter G. Smith, City Attorney

(kbl:11/21/16:81650)

PROFESSIONAL SERVICES AGREEMENT

THIS **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is made as of the Effective Date by and between **Weaver Consultants Group, LLC,** hereinafter called "**ENGINEER**", and the **City of Farmers Branch, Texas**, hereinafter called "**OWNER**". Owner and Engineer are hereafter collectively called "the Parties" and separately as "Party."

RECITALS

WHEREAS, OWNER desires ENGINEER to perform certain work and services set forth in Section 1, Scope of Work.

WHEREAS, ENGINEER has expressed a willingness to perform said work and services, hereinafter referred to only as "services", specified in said Scope of Work, and enumerated under Section 1, of this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, OWNER and ENGINEER agree as follows:

Section 1. Scope of Work

Upon issuance of a written Notice to Proceed by OWNER, ENGINEER agrees to provide to OWNER the necessary professional engineering services related to the preparation of plans and specifications for the **Phase E Landfill Gas Collection and Control System Expansion: Camelot Landfill, Denton County, Texas** ("the Project") as set forth in the Scope of Work attached hereto as Exhibit "A" and incorporated herein by reference ("the Scope of Work").

Section 2. Term of Agreement

The term of this Agreement shall begin on the date this Agreement is signed by authorized representatives of the Parties (the "Effective Date") and shall continue until ENGINEER completes the services required herein to the satisfaction of OWNER, unless sooner terminated as provided in Section 8, below.

Section 3. Engineer Obligations

A. ENGINEER shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should OWNER require additional services not included under this Agreement, ENGINEER shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by OWNER; and without decreasing the effectiveness of the performance of services required under this Agreement.

B. To the extent reasonably necessary for ENGINEER to perform the services under this Agreement, ENGINEER shall be authorized to engage the services of any agents, assistants, persons, or corporations that ENGINEER may deem proper to aid or assist in the performance of the services under this Agreement with the prior written approval of OWNER. The cost of such

personnel and assistance shall be a reimbursable expense to ENGINEER only if authorized in writing in advance by OWNER.

C. ENGINEER shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all services set forth in the Scope of Work.

Section 4. <u>Payment</u>

A. OWNER agrees to pay ENGINEER for all services authorized in writing and properly performed by ENGINEER in accordance with the Payment Schedule set forth in the Scope of Work, subject to additions or deletions for changes or extras agreed upon in writing. All fees paid to ENGINEER, by OWNER, shall be based on invoices submitted by ENGINEER for work performed monthly by ENGINEER , less any previous payments, Payments shall be made within 30 days of receipt of invoice by OWNER.

B. OWNER reserves the right to delay, without penalty, any partial payment when, in the opinion of OWNER, ENGINEER has not made satisfactory progress on the design of this Project based on the Scope of Work and the Completion Schedule Estimate.

C. The Total Engineering Fee shall be as specified in the Scope of Work, which shall not exceed **One Hundred Forty-Three Thousand Four Hundred Ninety-One and no/100 Dollars ($143,491.00).** OWNER may deduct from any amounts due or to become due to ENGINEER any sum or sums owing by ENGINEER to OWNER. In the event of any breach by ENGINEER of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against OWNER, or the OWNER's premises, arising out of ENGINEER's performance of this Agreement, OWNER shall have the right to retain out of any payments due or to become due to ENGINEER an amount sufficient to completely protect the OWNER from any and all loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by ENGINEER.

Section 5. <u>Responsibilities</u>

A. ENGINEER shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, plans and other services furnished by ENGINEER under this Agreement. ENGINEER shall, without additional compensation, correct or revise any errors or deficiencies in the design, drawings, specifications, plans and other services.

B. Neither OWNER's review, approval or acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and ENGINEER shall be and remain liable to OWNER in accordance with applicable law for all damages to OWNER caused by ENGINEER's negligent performance of any of the services furnished under this Agreement.

C. The rights and remedies of OWNER under this Agreement are as provided by law.

Section 6. Time For Performance

A. ENGINEER shall perform all services as provided for under this Agreement in a proper, efficient and professional manner in accordance with OWNER's requirements. Such services shall be completed as provided in the Project Schedule set forth Section 2 of the Scope of Work after written Notification to Proceed from OWNER to ENGINEER, exclusive of OWNER and other governmental review time.

B. In the event ENGINEER's performance of this Agreement is delayed or interfered with by acts of the OWNER or others, ENGINEER may request an extension of time for the performance of same as hereinafter provided, but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.

C. No allowance of any extension of time, for any cause whatever, shall be claimed or made to ENGINEER, unless ENGINEER shall have made written request upon OWNER for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless OWNER and ENGINEER have agreed in writing upon the allowance of additional time to be made.

Section 7. Documents

A. All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by ENGINEER and its consultants, subcontractors, agents, representatives, and/or employees in connection with this Agreement ("Project Documents") are intended for the use and benefit of OWNER. ENGINEER and its consultants, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the Project Documents. Notwithstanding, OWNER shall own, have, keep and retain all rights, title and interest in and to all Project Documents, including all ownership, common law, statutory, and other reserved rights, including copyrights (except copyrights held by the ENGINEER) in and to all Project Documents, whether in draft form or final form, which are produced at OWNER's request and in furtherance of this Agreement. OWNER shall have full authority to authorize contractor(s), subcontractors, sub-subcontractors, OWNER consultants, and material or equipment suppliers to reproduce applicable portions of the Project Documents to and for use in their execution of the work or for any other purpose. All materials and reports prepared by ENGINEER in connection with this Agreement are "works for hire" and shall be the property of OWNER. OWNER shall have the right to publish, disclose, distribute and otherwise use Project Documents in accordance with the Engineering Practice Act of the State of Texas (Texas Occupation Code, Chapter 1001, as amended) and/or Texas Occupations Code, Chapter 1051, as amended. ENGINEER shall, upon completion of the services and full payment for the ENGINEER'S services by the OWNER, or earlier termination and appropriate compensation as provided by this Agreement, provide OWNER with reproductions of all materials, reports, and exhibits prepared by ENGNIEER pursuant to this Agreement in a TIFF, JPEG or PDF format, and a DXF format in current version of AutoCAD with NAD-83 coordinate format of all such instruments of service to the OWNER.

B. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer programs, estimates, surveys, other data or work items, etc.)

prepared under this Agreement shall be submitted for approval of OWNER. All instruments of service shall be professionally sealed as may be required by law or by OWNER.

C. Acceptance and approval of the Project Documents by OWNER shall not constitute nor be deemed a release of the responsibility and liability of ENGINEER, its employees, associates, agents and Engineers for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by OWNER for any defect in the designs, working drawings and specifications, or other documents prepared by ENGINEER, its employees, contractor, agents and engineers.

Section 8. <u>Termination</u>

A. OWNER may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to ENGINEER. In the event suspension or termination is without cause, payment to ENGINEER, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by OWNER to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to OWNER.

B. Should OWNER require a modification of this Agreement with ENGINEER, and in the event OWNER and ENGINEER fail to agree upon a modification to this Agreement, OWNER shall have the option of terminating this Agreement and ENGINEER's services hereunder at no additional cost other than the payment to ENGINEER, in accordance with the terms of this Agreement, for the services reasonably determined by OWNER to be properly performed by ENGINEER prior to such termination date.

Section 9. <u>Insurance</u>

A**.** ENGINEER shall during the term hereof maintain in full force and effect the following insurance:

(i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the ENGINEER's performance of services pursuant to this Agreement with a minimum combined single limit of not less than $4,000,000.00 per occurrence for injury to persons (including death), and for property damage;

(ii) A policy of automobile liability insurance covering any vehicles owned and/or operated by ENGINEER, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than $1,000,000.00 combined single limit and aggregate for bodily injury and property damage;

(iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of ENGINEER's employees involved in the provision of services under this Agreement with policy limit of not less than $500,000.00; and

(iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than $4,000,000.00 per claim and $4,000,000.00 in the aggregate.

B. All insurance and certificate(s) of insurance shall contain the following provisions: (1) name OWNER, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; and (2) provide for at least thirty (30) days prior written notice to OWNER for cancellation or non-renewal of the insurance; (3) provide for a waiver of subrogation against OWNER for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. ENGINEER shall provide written notice to OWNER of any material change of or to the insurance required herein.

C. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

D. A certificate of insurance evidencing the required insurance and all endorsements shall be submitted prior to commencement of services.

Section 10. <u>Indemnification For Injury and Performance</u>

OWNER shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from the services of ENGINEER pursuant to this agreement. ENGINEER hereby waives all claims against OWNER, its officers and employees (collectively referred to in this section as "OWNER") for damage to any property or injury to, or death of, any person arising at any time and from any cause other than the negligence or willful misconduct of OWNER or breach of OWNER's obligations hereunder. ENGINEER agrees to indemnify and save harmless OWNER from and damages (including court costs and reasonable attorneys' fees and costs of investigation) and actions of any kind by reason of injury to or death of any person or damage to or loss of property to the extent caused by ENGINEER's negligent performance of services under this Agreement or by reason of any negligent act or omission on the part of ENGINEER, its officers, directors, servants, employees, representatives, consultants, licensees, successors or permitted assigns (except when such liability, claims, suits, costs, injuries, deaths or damages arise from or are attributed to negligence of OWNER, in whole or in part, in which case ENGINEER shall indemnify OWNER only to the extent or proportion of negligence attributed to professional as determined by a court or other forum of competent jurisdiction). ENGINEER's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained by ENGINEER under this Agreement. This provision shall survive the termination of this Agreement.

Section 11. <u>Assignment</u>

ENGINEER shall not assign or sublet this Agreement, or any part thereof, without the prior written consent of OWNER.

Section 12. Applicable Laws

ENGINEER shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes relating or applicable to services to be performed under this Agreement. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court

Section 13. Default of ENGINEER

In the event ENGINEER fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within ten (10) days after written notice by OWNER to ENGINEER, OWNER may, at its sole discretion without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to ENGINEER except for all work determined by OWNER to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of ENGINEER to and from meetings called by OWNER at which ENGINEER is required to attend, but shall not include any loss of profit of ENGINEER. In the event, of such termination, OWNER may proceed to complete the services in any manner deemed proper by OWNER, either by the use of its own forces or by resubletting to others.

B. OWNER may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of ENGINEER.

Section 14. Adjustments in Services

No claims for extra services, additional services or changes in the services will be made by ENGINEER without a written agreement with OWNER prior to the performance of such services.

Section 15. Agreement Amendments

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the Parties except as may be otherwise provided therein.

Section 16. Severability.

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 17. Independent Contractor.

It is understood and agreed by and between the Parties that ENGINEER, in satisfying the conditions of this Agreement, is acting independently, and that the OWNER assumes no responsibility or liabilities to any third party in connection with ENGINEER's actions. All services to be performed by ENGINEER pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of OWNER. ENGINEER shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third party beneficiary to this Agreement.

Section 18. Right-Of-Access.

OWNER will obtain and/or furnish right-of-access on any project site for ENGINEER to perform any required studies, surveys, tests or other necessary investigations in relation to any Task Order. ENGINEER will take reasonable precautions to minimize damage to the personal or real property in the performance of such surveys, tests, studies and investigations.

Section 19. Notice.

Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If to OWNER: (Physical Address)	Shane Davis Environmental Services and Solid Waste Manager City of Farmers Branch 13000 William Dodson Pkwy Farmers Branch, TX 75234
(Mailing address):	P.O. Box 819010 Farmers Branch, TX 75381

(With copies to):	Peter G. Smith Nichols, Jackson, Dillard, Hager & Smith, L.L.P. 500 North Akard, Suite 1800 Dallas, Texas 75201 Randy Walhood, Director of Public Works City of Farmers Branch 13000 William Dodson Pkwy Farmers Branch, TX 75234
If to ENGINEER:	Matt K. Stutz, P.E. Weaver Boos Consultants LLC-Southwest 6420 Southwest Blvd., Suite 206 Fort Worth, TX 76109

Section 20. <u>Counterparts</u>.

This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties.

Section 22. <u>Exhibits</u>.

The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

Section 23. <u>Survival of Obligations</u>.

Any of the representations and obligations of the Parties, as well as any rights and benefits of the Parties pertaining to a period of time following the termination of this Agreement shall survive termination.

(Signature page to follow)

SIGNED AND AGREED this _____ day of December, 2016.

Owner: City of Farmers Branch, Texas

By:_____
Charles S. Cox, City Manager

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED AS TO FORM:

_____
City Attorney

SIGNED AND AGREED this _____ day of _____, 2016.

Engineer: Weaver Consultants Group, LLC

By:_____

Name:_____

Its:_____

EXHIBIT A:SCOPE OF WORK

PHASE E LANDFILL GAS COLLECTION AND CONTROL SYSTEM EXPANSION

CAMELOT LANDFILL DENTON COUNTY, TEXAS

Prepared for

City of Farmers Branch

October 2016

Prepared by

Weaver Consultants Group, LLC
TBPE Firm Registration No. F-3727
6420 Southwest Boulevard, Suite 206
Fort Worth, Texas 76109
817-735-9770

SCOPE OF SERVICES

Introduction

The City of Farmers Branch (City) owns the Camelot Landfill (Landfill). The facility is presently equipped with an active landfill gas (LFG) collection and control system (GCCS) that extracts LFG generated from the landfill for combustion within an onsite flare system and sends to the LFGTE facility for beneficial use. It is our understanding that City wishes to expand the existing GCCS in order to control greenhouse gas emissions and prevent potential odors. In addition, this proposal includes the drilling, CQA, and surveying services for raising the four (4) groundwater monitoring wells.

Project Approach

Based on recent meetings and discussions with City staff, as well as our understanding of the site, Weaver Consultants Group, LLC (WCG) has developed the following scope of services. The proposed scope of services consists of the following tasks.

- Task 1 – Project Planning Meeting
- Task 2 – Preliminary Design
- Task 3 – MSW Permitting
- Task 4 – Construction Documents
- Task 5 – Advertisement and Award
- Task 6 – Construction Management
- Task 7 – GCCS Construction Quality Assurance
- Task 8 – Construction Surveying
- Task 9 – Construction Documentation Report/Record Drawings
- Task 10 – Raising Groundwater Monitoring Wells

The following describes in detail each of the proposed tasks to be prepared under the project.

Task 1 – Project Planning Meeting

WCG staff will visit the project site to meet with City staff to discuss the scope of the project, identify project constraints, and to obtain additional site-specific background data that may be required for successful completion of the work.

Task 2 – Preliminary Design

Following the completion of Task 1, WCG will proceed with the preliminary design for the GCCS expansion. Permit level drawings will be developed for insertion into the Permit Modification prepared under Task 3. A draft of the preliminary design drawings will be submitted to the City for review and comment. WCG will be prepared to meet with the City to discuss the system plan and details.

The detailed construction plans and details, and technical specifications will be developed in Task 4.

Task 3 – MSW Permitting

WCG will prepare and submit a Permit Modification on behalf of the City for the proposed GCCS expansion for TCEQ approval. The Permit Modification will be submitted as a revision to the City's existing Attachment 14 – Landfill Gas Management Plan. The document will include revised pages to the site's existing Landfill Gas Management Plan, as well as permit level drawings and a narrative description of the proposed GCCS. Draft copies of the permit modification will be submitted to the City for review and comment. WCG will be prepared to discuss the draft permit modification with City representatives via teleconference and to answer any comments. Once we have received City review comments, WCG will submit the permit modification to the TCEQ for approval.

In addition, WCG will prepare the 45-day asbestos notification letter for submittal to TCEQ.

Task 4 – Construction Documents

While the TCEQ is reviewing and approving the permit modification, WCG will proceed with the development of GCCS construction documents. Detailed drawings will be developed suitable for competitive bidding and construction purposes. The final construction plans and details will be developed based on the City's review of the preliminary plans and details. WCG will be prepared to meet with the City to discuss their review comments on the draft set of construction drawings. City comments will then be incorporated into the final GCCS construction plans and details for bidding and construction purposes.

WCG will also prepare the technical specifications for the GCCS expansion. The technical specifications will include a description of equipment design and performance, construction materials, and execution requirements. WCG assumes the City will provide the standard City front-end bid package documents, including general conditions,

supplementary conditions, and other necessary bid documents used in City contract documents if they have changed since the latest bid package was completed.

WCG will prepare and submit a draft of the assembled contract documents to the City for review. Upon receipt of the City's comments, the bid documents and technical specifications will be finalized and ten sets of the final contract documents will be prepared for bidding purposes.

Task 5 – Advertisement and Award

Under this task, WCG will assist the City throughout the bid advertisement and award phase for the GCCS expansion. WCG will coordinate with the City for advertisement of the project in local newspapers, as well as notifications to contractors experienced with this type of construction project. WCG will prepare the Invitation to Bidders for the City's use in placing the notice in the newspapers.

A Pre-Bid Conference will be conducted by WCG at the site for all interested bidders. WCG will also respond to any questions from bidders during the bidding phase and prepare and distribute any addenda, if required.

In addition, WCG will participate in the bid opening if desired by the City. Afterwards, WCG will tabulate the bids and evaluate the qualifications of the low bidder. A recommendation of award will then be provided to the City.

Task 6 – Construction Management

Under this task, WCG will provide construction management to the City. Included in this task are the following activities:

- Attendance at a pre-construction meeting.
- Review and approval of all contractor material submittals and shop drawings.
- Provide technical clarifications or interpretations of the work to the Contractor, as needed.
- Attendance of three additional meetings during the course of the project.
- Review and recommendation for approval of all pay requests by the Contractor.
- Review and recommendation of any change order requests issued by the Contractor.
- Preparation and issuance of any field changes or change orders issued by the City.
- Attendance of the final inspection and the preparation of a final punch list.

Task 7 – GCCS Construction Quality Assurance

As part of this task, WCG will provide full-time construction quality assurance (CQA) observation and inspections during the drilling and piping phases of construction.

The CQA inspections will be to verify that the Contractor is performing the work in accordance with the construction drawings and written specifications. CQA personnel will prepare daily construction observation reports for each day they are onsite and will include these in the Construction Documentation Report completed after the end of construction.

WCG will also be onsite for any quality control testing required for the GCCS expansion, including the pressure testing of the new piping installations.

In order to provide a cost effective construction quality assurance, this project was been divided into two subtasks as described below.

Extraction Well Installation

In order to prepare the cost estimate for this proposal it was assumed that a field technician would be onsite full time during drilling and installation of the extraction wells. It is estimated that the drilling will take seventeen (17) ten-hour days to complete.

System Installation

During the installation of the piping it is assumed that the field technician will be onsite full time. Piping installation is expected to last ten weeks of six ten-hour days.

Task 8 – Construction Surveying

WCG will provide one surveying visit to complete the pre-construction staking for the GCCS expansion, as well as complete the as-built survey for the newly installed piping and wells.

Task 9 – Construction Documentation Report/Record Drawings

WCG will prepare a construction report summarizing our CQA observations and inspections during the GCCS expansion. This report will briefly describe the construction methods and procedures used by the Contractor with respect to compliance with the Contract Documents. WCG will also prepare a set of record drawings for the project, based on the completed survey and field observations, and include them in the construction report. Two copies of the construction report will be submitted to the City for your records.

Task 10 – Raising Groundwater Monitoring Wells

Due to the recent slurry wall construction, surface water is ponding around the 4 groundwater monitoring wells. This task includes the driller supervision while he removes each well's surface pad and protective cover box, supervising landfill personnel while placing additional soil lifts, and supervising the driller as he replaces the 4 surface completions including resurveying and report preparation. The detail task for raising four (4) groundwater monitoring wells includes the following;

Field CQA and Report Preparation

Under this task, a WCG geologist will supervise a Texas-licensed monitor well driller in the field during the removal of the surface completions (concrete pads and protective metal covers) at existing monitor wells MW-4R, MW-9, MW-10 and MW-12. After the

removals, WCG will supervise landfill personnel while they place additional soil lifts at each of the 4 well locations. Following the soil lift placements, WCG will supervise the driller while he replaces the surface completions. WCG will prepare two draft electronic copies of a report to be submitted to Republic and the City for review and comment via e-mail. Once we have received review comments, WCG will submit six final plugging report copies to the TCEQ, Republic Services and City.

Driller Services

WCG will subcontract the services of a Texas-licensed monitor well driller to raise the monitor well casings for 4 wells in accordance with TCEQ and TDLR requirements. All removed well materials will be transported by the driller to a location specified by Camelot Landfill for disposal at no cost to the driller or WCG. At the completion of the probe plugging, the driller will submit one driller's plugging report to WCG. The driller's report will be incorporated into the project's plugging report.

Surveyor Services

This task includes resurveying the 4 monitor wells for top of casing elevations.

PROJECT SCHEDULE

WCG will begin the work described in this proposal upon receiving authorization to proceed. The following is our estimated schedule with the authorization to proceed date as Week 0.

Estimated Project Schedule

Task No.	Description	Completion Date
1	Project Planning Meeting	Week 2
2	Preliminary Design	Week 3
3	MSW Permitting/LFG Remediation Plan	Week 4
4	Construction Documents	Week 8
5	Advertisement and Award	Week 10
6, 7, 8, 9	Construction Services	Begin Week 14
10	Raising Groundwater Monitoring Wells	Week 12

PROJECT BUDGET

WCG proposes to perform the services described in the scope of work on lump sum basis. Cost estimates for each task in the project are presented on Table 2.

Estimated Project Budget
Camelot Landfill

Task No.	Description	Labor Cost ($)	Direct Expense ($)	Estimated Task Cost ($)
1	Project Planning Meeting	$1,600	$400	$2,000
2	Preliminary Design	$6,100		$6,100
3	MSW Permitting	$4,100	$300	$4,400
4	Construction Documents	$9,900	$700	$10,600
5	Advertisement and Award	$3,800	$200	$4,500
6	Construction Management	$17,250	$550	$17,800
7	GCCS Construction Quality Assurance			
	7.1 – Extraction Well Installation	$14,450	$1,850	$16,300
	7.2 – Pipe Installation	$53,650	$6,800	$60,450
8	Construction Surveying	$5,700	$300	$6,000
9	Construction Documentation Report	$4,600	$400	$5,000
10	Raising Ground Water Monitoring Wells			
	10.1 – Field CQA and Report Preparation	$3,904	$857	$4,761
	10.2 – Driller Services	$0	$4,580	$4,580
	10.3 – Surveyor Services	$850	$150	$1,000
			Total:	**$143,491**

Assumptions

To prepare the scope of work and budget for the proposed services, WCG has made the following assumptions.

- The site will be able to provide all necessary information relevant to this project. Available background materials requested will be provided to WCG at no cost.

- The City will provide electronic copies of its standard front-end bid package documents, including general conditions, supplementary conditions, and other necessary bid documents used in City contract documents.

- The GCCS expansion design shall be completed using the most recent aerial photography and topographic information available to WCG. As such, the construction bid quantities may require modification based on physical changes to site conditions since the time of the aerial photograph and topographic mapping.

- Any work not included under this proposed scope of services shall be performed after a new scope and price have been approved by the City. If necessary, unit price or time and materials (T&M) estimate will be established to cover any work beyond the scope of this project.

- Our CQA budget is based on anticipated production estimates for the quantities of work completed by the contractor on a daily basis. Production rates vary by contractor based on its available resources. Should the actual rate of completed work be less that that projected, WCG will notify City personnel to discuss options, including the possibility of a contract addendum.

- No provisions are included for any weather-related delays, or delays caused by the Contractor's actions.

- Task 10 cost includes 2 driller and 3 WCG mobilizations to the site.

- The site will place additional soils at 4 monitor well locations to raise the ground surface at no cost to WCG or the driller.

- The site will provide any access improvements necessary for the driller's equipment access to the well locations at no cost to WCG or the driller.

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-124

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: G.15

Consider approving Resolution No. 2016-124 ratifying an emergency purchase order with Rebcon Inc. for bridge and road collapse repairs along Luna Road; and take appropriate action.

BACKGROUND:
On or about September 1, 2016 City forces came across unstable pavement on Luna Road south of Mira Lago Boulevard at the bridge. After investigating the pavement failure, it was found that there were voids within the bridge structure and beneath the pavement. Due to the high volume of vehicular traffic, the City proceeded to close lanes because of the unsafe environment for the traveling public in this area. The City found that the bridge and pavement issues qualified as an emergency repair.

DISCUSSION:
City Administration found the bridge and pavement conditions to be a safety issue. To prevent further damage to the structure and pavement, the repairs to the bridge and pavement needed to be done as soon as possible.

The Director of Public Works executed a purchase requisition for the emergency repairs of the bridge and pavement collapse on Luna Road with Rebcon Inc. Staff solicited Rebcon, Inc. due to their availability and having the appropriate equipment and expertise to make such repairs.

The repairs of the failing bridge and road are complete. The 2016-2017 Capital Improvement Program, Street Improvement Bond Fund provides for street repairs throughout the City. The total cost of the emergency repairs was in the amount of $81,845.00.

RECOMMENDATION:
The Public Works Director recommend adopting Resolution No. 2016-124 ratifying an emergency purchase order with Rebcon Inc. for bridge and road collapse repairs along Luna Road.

ACTION BY COUNCIL:

1. Move to adopt Resolution No. 2016-124 ratifying an emergency purchase order with Rebcon Inc. for bridge and road collapse repairs along Luna Road.
2. Move to adopt Resolution No. 2016-124 ratifying an emergency purchase order with Rebcon Inc. for bridge and road collapse repairs along Luna Road, with modifications.
3. Move to table the item.

ATTACHMENTS:
1. Location Map
2. Resolution No. 2016-124

FARMERS BRANCH

LOCATION MAP

NORTH

Date: 11/30/2016

Document Path: G:\0B-CAD & GIS\GIS\Arcmap Projects\Location Maps\Location Map Metro SE.mxd

RESOLUTION NO. 2016-124

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, MAKING CERTAIN FINDINGS WITH RESPECT TO EMERGENCY BRIDGE AND ROAD REPAIRS ON LUNA ROAD; RATIFYING THE ACTIONS OF THE CITY MANAGER AND DIRECTOR OF PUBLIC WORKS RELATING TO THE NEGOTIATION AND EXECUTION OF CONTRACT WITH REBCON INC TO MAKE SUCH REPAIRS; AUTHORIZING PAYMENT WITH RESPECT TO SAID CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Luna Road carries a high volume of commercial and non-commercial vehicle traffic into and out of the City; and

WHEREAS, City forces discovered an area along Luna Road with bridge and pavement structural failure which, if not immediately repaired, could have foreseeably led to a complete failure of the road and/or bridge, endangering the public health and safety and disrupting significant traffic routes into and out of the City; and

WHEREAS, because of the potential danger and disruption the above-described failure could have caused, the City Manager, on the recommendation of the Director of Public entered into a contract with Rebcon, Inc. to make the necessary pavement and bridge repairs ("the Emergency Project") because of their immediate availability, the ability to provide the appropriate equipment needed to make the repairs, and its expertise to make such repairs; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to make certain findings regarding the above repairs and agreements, to ratify and affirm the actions of the City Manager and Director of Public Works, and authorize payment:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Council of the City of Farmers Branch finds that the Emergency Project and the agreement with Rebcon, Inc. to conduct the repairs as part of the Emergency Project constituted a procurement (a) made because of a public calamity that required the immediate appropriation of money to preserve the City's property, (b) necessary to preserve or protect the public health and safety of the City's residents, and (c) necessary because of unforeseen damages to public property, and, therefore, constituted an emergency which necessitated the procurement of said agreement and the expenditures related to same without obtaining sealed bids or proposals for same as allowed pursuant to Texas Local Government Code §252.022 and applicable city purchasing policies.

SECTION 2. The actions of the City Manager and Director of Public works relating to the negotiation and execution of an agreement with Rebcon, Inc. to perform the repairs relating to the Emergency Project in the amount of $81,845.00 are hereby ratified and affirmed and shall be

deemed to be actions authorized by the City Council as if such authority had been granted to the City Manager and Director of Public Works prior to said actions having been taken.

SECTION 3. The City Manager is hereby authorized to pay Rebcon, Inc. in accordance with the agreement authorized and ratified pursuant to Section 2, above, from funds available in the FY 2016-17 budget.

SECTION 4. This resolution shall become effective immediately upon its approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:11/30/16:81924)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16-300

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Public Hearing

In Control: City Council **File Type:** Report

Agenda Number: H.1

Conduct a Public Hearing and consider an appeal from designation in the Mandatory Crime Reduction Program for London Square Apartments located at 4030 Valley View Lane in Farmers Branch; and take appropriate action.

BACKGROUND:
In an effort to make multi-family apartment complexes a safer place, the City of Farmers Branch has enacted the Mandatory Crime Reduction Program which is designated for Apartment Complexes. The Farmers Branch Police Department notified London Square Apartments of this designation on October 10, 2016. The City received an appeal letter of this designation on October 24, 2016.

DISCUSSION:
Mr. Daniel Esquer, representing London Square Apartments has submitted a written request to appear before the City Council to appeal the Mandatory crime Reduction Program for London Square Apartments.

RECOMMENDATION:
The Police Chief recommends that the City Council Affirm the designation of London Square Apartments in the Mandatory Crime Reduction Program.

POSSIBLE COUNCIL ACTION:
1. I move that the City Council sustain the Farmers Branch Police Department's crime index findings for the multifamily complex located at 4030 Valley View and AFFIRM the Farmers Branch Police Department's October 10, 2016 designation and enrollment of London Square in the City's Mandatory Crime Reduction Program.
2. I move that the City Council find that the evidence does not support the Farmers Branch Police Department's crime index findings for the multifamily complex located at 4030 Valley View and OVERTURN the Farmers Branch Police Department's October 10, 2016 designation and enrollment of London Square in the City's Mandatory Crime Reduction Program.

3. I move that the City Council sustain the Farmers Branch Police Department's crime index findings for the multifamily complex located at 4030 Valley View but MODIFY the Farmers Branch Police Department's October 10, 2016 designation and enrollment of London Square in the City's Mandatory Crime Reduction Program by [STATE PROPOSED MODIFICATIONS].

ATTACHMENTS:

1. Notification Letter
2. Appeal Letter
3. Crime Index Threshold Spreadsheet
4. Arial Map 4030 Valley View
5. Appeal Presentation 4030 Valley View

FARMERS BRANCH

Farmers Branch Police Department
3723 Valley View Lane
Farmers Branch, Texas 75244

October 10, 2016

London Square
Eagle Rock LLC
14881 Quorum Drive
Suite 190
Dallas, Texas 75254

RE: London Square Apartments located at 4030 Valley View, Farmers Branch Tx. (the "property")

In an effort to make multi-family/apartment complexes safer places for the tenants that reside there, the City of Farmers Branch enacted the "**MANDATORY CRIME REDUCTION PROGRAM FOR DESIGNATED APARTMENT COMPLEXES**", Article VII, Chapter 26, of the Farmers Branch City Code.

Our records indicate that you are the owner, operator, or property manager of the above referenced property. In accordance with the aforementioned ordinance, your property has been identified as being in violation of Article VII, Chapter 26 of the Farmers Branch Code. This letter serves as notice that:

- Your property is required to participate in Mandatory Crime Reduction Program for a minimum of six (6) months. The crime index threshold for apartments will be reviewed every six months to determine if your property's crime index has fallen below the crime risk threshold.

- The average crime index threshold for crimes from October 1, 2015 through September 30, 2016 was:

    - The average crime index threshold for apartments: 10.4 crime per 100 units, your total crime index: **12.4** crimes per 100 units.
    - The total number of units used to calculate these numbers: 105
    - The number of enforcement, financial crime/id theft, other, person, and property offenses for your property used to calculate your property's crime index:
        - Enforcement 1 financial 0 other 8 person 8 property 14

- See attached list of offenses for specific dates, times and location of offenses.

- As required by ordinance, there will be a mandatory inspection of your property to be conducted by the Chief of Police or his designee. We will contact you to schedule the date and time of this required inspection.

- Your property will be invoiced by the City of Farmers Branch Finance Department a program fee of $500.00 which is due 30 days from the date of this letter.

- The action shall be final unless, within ten calendar days after receipt of the notice you file a written request for an appeal hearing before the City Council with the City Secretary's Office, Farmers Branch City Hall, 13000 William Dodson, Farmers Branch, Texas 75234. Questions concerning the ordinance or the appeal process should be directed to the City Secretary's Office at (972) 247-3131.

- This designation of this property for entry into the Mandatory Crime Reduction Program and the application of the requirements of Article VII of the ordinance are binding upon all subsequent owners or other transferees of an ownership interest in the property.

If you have any questions please contact Officer K. Garrett, at (972) 919-9135

Delivered on the 19 day of October to: Anita Johnson (Owner/ Manager)

Sincerely,

David Hale
Chief of Police

Mark Young

By Mark Young
Deputy Chief of Police

Wells
WELLS ASSET MANAGEMENT
PERFECTED PERFORMANCE
14881 QUORUM DR. SUITE 190 DALLAS TX 75254 • www.wellsasset.com • Tel: 972.458.2588 • Fax: 972.702.8858

Amy Piukana
City Secretary
City Hall
13000 William Dodson Parkway
Farmers Branch, TX 75234

RE: REQUEST FOR AN APPEAL HEARING BEFORE THE CITY COUNCIL

Dear Amy Piukana:

We have received a notice of designation to participate in the Mandatory Crime Reduction Program for London Square Apartments located at 4030 Valley View in Farmers Branch. We would like to schedule an appeal hearing before the City Council.

Sincerely,

Daniel Esquer, CAM
Junior Regional Supervisor

Enclosure

Crimes reported 10/01/15 - 10/01/2016 at apartment complexes in Farmers Branch

	enforcement	financial crime / ID theft	other	person	property	Total reported crime	Units	Crime index
Villa Gardens (2730 Fyke)	4	0	9	5	15	33	142	23.2
Cookscreek (CC/Herit)	2	0	3	12	19	36	255	14.1
London Square (4030 VV)	0	0	2	7	4	13	105	12.4
Ventana at Valwood (CC/Herit)	1	0	8	8	14	31	265	11.7
Villa Creek & London Villa (2835 & 2875 VC)	1	0	3	4	10	18	160	11.3
Courtyards of VV (4050-4070 VV, St. Lawrence)	1	0	0	3	4	8	95	8.4
Elan City Centre (13301 Galleria)	1	0	2	9	15	27	330	8.2
Laguna Vista (1580 Mira Lago)	0	0	0	0	15	15	206	7.3
Portofino (11601 Lago Vista W)	0	0	0	1	13	14	224	6.3
Mercer Crossing (11700 Luna Rd.)	0	0	0	5	16	17	299	5.7
Broadstone (13465 Inwood & 5005 Galleria)	0	0	0	2	16	18	333	5.4
Havenhurst Apts (13314 Goodland)	0	0	0	2	0	2	38	5.3
Mustang Crossing (2500 Pepperwood)	1	0	0	0	11	12	256	4.7
Macon Manor (2534 Vintage)	0	0	0	2	0	2	44	4.5
Prairie Crossing (4000 Sigma)	1	0	1	2	11	15	367	4.1
Brookhaven Apts (14800 Marsh)	0	0	0	0	5	5	136	3.7
Villas at Parkside (4000 Parkside)	0	0	0	3	4	7	207	3.4
Chateau de Ville (4040 SV)	0	0	0	1	4	5	161	3.1
Lakeview at Parkside (3950 & 3990 SV)	0	0	2	6	8	16	573	2.8
Lincoln Waters Edge (1701 Royal & 11411 Luna)	0	0	0	1	12	13	582	2.2
Evergreen (11701 Mira Lago)	0	0	1	0	1	2	90	2.2
Huntington (14802 Enterprise)	1	0	0	1	0	2	100	2.0
Total reported crime at apartment complexes	13	0	31	74	197	311	Average crime index	6.9
Total Farmers Branch reported crime	494	118	195	243	1,123	2167	Threshold (50% above average)	10.4
Percent of total reported at apartments	3%	0%	16%	30%	18%	14%		

Orange = in program / compliant
Red = in program / non-compliant

Comparison:								
111 houses near Ablon	0	0	0	0	4	4	111	3.6
114 houses near 2900 Lavita	0	1	0	0	8	9	114	7.9
120 houses near 13700 Heartside	3	0	0	4	6	13	120	10.8

"enforcement" includes DWI, narcotics, and weapons arrests
"financial crime / ID theft" includes forgery, credit card abuse, impersonation, and fraudulent use of identifying information
"other" includes evading/resisting arrest, fail to ID, violation of protective order, etc.

"person" includes assault, robbery, harassment, and kidnapping
"property" includes burglary, vehicle burglary, motor vehicle theft, and criminal mischief

The threshold of
10.4 is here.

4030 Valley View Ln
© 2016 Google
Google Earth
1995
32°55'24.82" N 96°50'42.27" W elev 634 ft eye alt 1188 ft

Mandatory Crime Reduction Program

FARMERS BRANCH

Appeal: 4030 Valley View Lane: London Square

Arial View: 4030 Valley View

FARMERS BRANCH

Crime Index

Crimes reported 10/01/15 - 10/01/2016 at apartment complexes in Farmers Branch	enforcement	financial crime/ ID theft	other	person	property	Total reported crime	Units	Crime index	
Villa Gardens (2730 Fyke)	4	0	9	5	15	33	142	23.2	
Cookscreek (CC/Herit)	2	0	3	12	19	36	255	14.1	
London Square (4030 VV)	0	0	2	7	4	13	105	12.4	
Ventana at Valwood (CC/Herit)	1	0	8	8	14	31	265	11.7	
Villa Creek & London Villa (2835 & 2875 VC)	1	0	3	4	10	18	160	11.3	The threshold of 10.4 is here.
Courtyards of VV (4050-4070 VV, St. Lawrence)	1	0	0	3	4	8	95	8.4	
Elan City Centre (13301 Galleria)	1	0	2	9	15	27	330	8.2	
Laguna Vista (1580 Mira Lago)	0	0	0	0	15	15	206	7.3	
Portofino (11601 Lago Vista W)	0	0	0	1	13	14	224	6.3	
Mercer Crossing (11700 Luna Rd.)	0	0	0	5	16	17	299	5.7	
Broadstone (13465 Inwood & 5005 Galleria)	0	0	0	2	16	18	333	5.4	
Havenhurst Apts (13314 Goodland)	0	0	0	2	0	2	38	5.3	
Mustang Crossing (2500 Pepperwood)	1	0	0	0	11	12	256	4.7	
Macon Manor (2534 Vintage)	0	0	0	2	0	2	44	4.5	
Prairie Crossing (4000 Sigma)	1	0	1	2	11	15	367	4.1	
Brookhaven Apts (14800 Marsh)	0	0	0	0	5	5	136	3.7	
Villas at Parkside (4000 Parkside)	0	0	0	3	4	7	207	3.4	
Chateau de Ville (4040 SV)	0	0	0	1	4	5	161	3.1	
Lakeview at Parkside (3950 & 3990 SV)	0	0	2	6	8	16	573	2.8	
Lincoln Waters Edge (1701 Royal & 11411 Luna)	0	0	0	1	12	13	582	2.2	
Evergreen (11701 Mira Lago)	0	0	1	0	1	2	90	2.2	
Huntington (14802 Enterprise)	1	0	0	1	0	2	100	2.0	
Total reported crime at apartment complexes	13	0	31	74	197	311	Average crime index	6.9	
Total Farmers Branch reported crime	494	118	195	243	1,123	2167	Threshold (50% above average)	10.4	
Percent of total reported at apartments	3%	0%	16%	30%	18%	14%			
Orange = in program / compliant									
Red = in program / non-compliant									
Comparison:									
111 houses near Ablon	0	0	0	0	4	4	111	3.6	
114 houses near 2900 Lavita	0	1	0	0	8	9	114	7.9	
120 houses near 13700 Heartside	3	0	0	4	6	13	120	10.8	

"enforcement" includes DWI, narcotics, and weapons arrests
"financial crime / ID theft" includes forgery, credit card abuse, impersonation, and fraudulent use of identifying information
"other" includes evading/resisting arrest, fail to ID, violation of protective order, etc.
"person" includes assault, robbery, harassment, and kidnapping
"property" includes burglary, vehicle burglary, motor vehicle theft, and criminal mischief

FARMERS BRANCH

Offense Data 4030 Valley View

Enforcement				
16002212155	9/2/2016	4030 Valley View	Driving While Intoxicated BAC>=0.15	Not used
				(on-street)
Financial				
207423	12/29/2015	4030 Valley View	Fraud Use/Poss of Identifying info <5	Not used
				(other loc.)
Other				
1600210514	6/10/2016	4030 Valley View	Interfer with Emergency Call	Yes
206225	10/19/2015	4030 Valley View	Sex Abuse of Child Continuous: Victim <14	Yes
206227	10/19/2015	4030 Valley View	Child Abuse	Duplicate
Person				
1600209396	4/6/2016	4030 Valley View	Assault Cause Bodily Injury Family Enhanced	Yes
1600209578	4/16/2016	4030 Valley View	Assault Causes Bodily Injury	Yes
1600210250	5/25/2016	4030 Valley View	Assault M/C Physical Contact	Yes
1600210513	6/10/2016	4030 Valley View	Assault Fam/House Mem Impede Breath/cir	Duplicate
1600211211	7/18/2016	4030 Valley View	Sexual Assault	Yes
1600212062	8/30/2016	4030 Valley View	Assault Cause Bodily Injury Family Member	Yes
206905	11/26/2015	4030 Valley View	Assault Cause Bodily Injury Family Member	Yes
208356	2/17/2016	4030 Valley View	Aggravated Assault Deadly Weapon	Yes
Property				
1600210336	5/31/2016	4030 Valley View	Burglary of Vehilce	Yes
206329	10/24/2015	4030 Valley View	Unauthorized Use of Vehicle	Yes
206955	11/30/2015	4030 Valley View	Criminal Mischief >=$100<$750	Yes
Property Other				
1600210578	6/14/2016	4030 Valley View	Criminal Mischief >=$100<$750	Yes

Questions?

FARMERS BRANCH

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3404

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Public Hearing

In Control: City Council **File Type:** Ordinance

Agenda Number: H.2

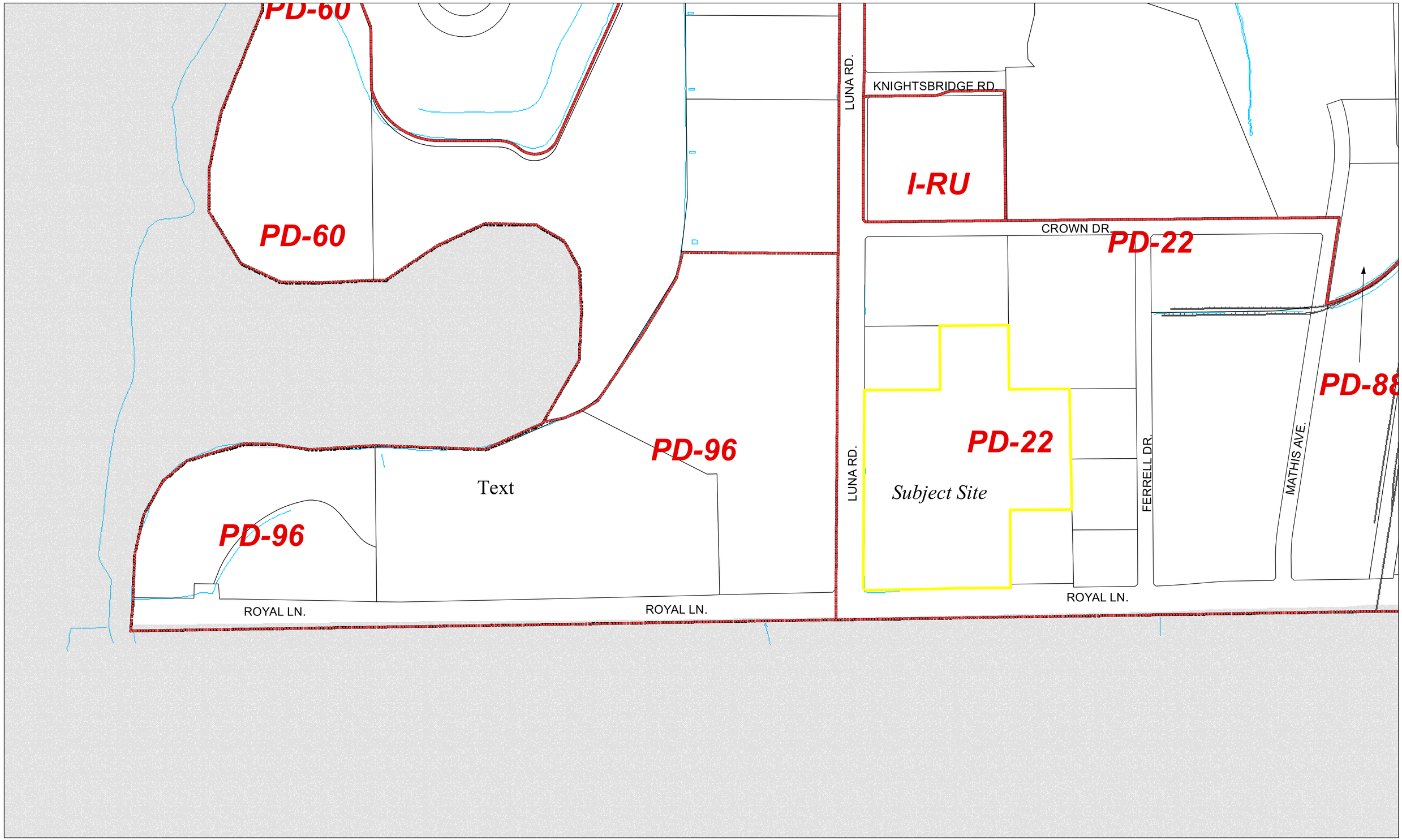
Conduct a Public Hearing and consider adopting Ordinance No.3404 authorizing a Specific Use Permit for the sale of alcoholic beverages in a qualified restaurant located at 1801 Royal Lane, Suite 700; and take appropriate action.

BACKGROUND:
The applicant, Luna Taps, is requesting a Specific Use permit to allow the sale of alcohol in a qualified restaurant. The site is located within the Planned Development District No 22 (PD-22).

RECOMMENDATION:
On November 14th, 2016, the Planning & Zoning Commission voted to recommend approval of the Specific Use Permit outlined in Ordinance No. 3404.

ACTIONS:
1. Motion to adopt Ordinance No. 3404.
2. Motion to adopt Ordinance No. 3404 with the following modification(s)…..
3. Motion to continue discussion of this case at the following meeting.

ATTACHMENTS:
1. Location Map
2. Aerial Map
3. Information Memorandum
4. Ordinance No. 3404
5. Site Photographs



Zoning District Boundary

Parcel Property Boundaries

City Limit

16-SU-17 - Location Map
1801 Royal Lane

FARMERS BRANCH

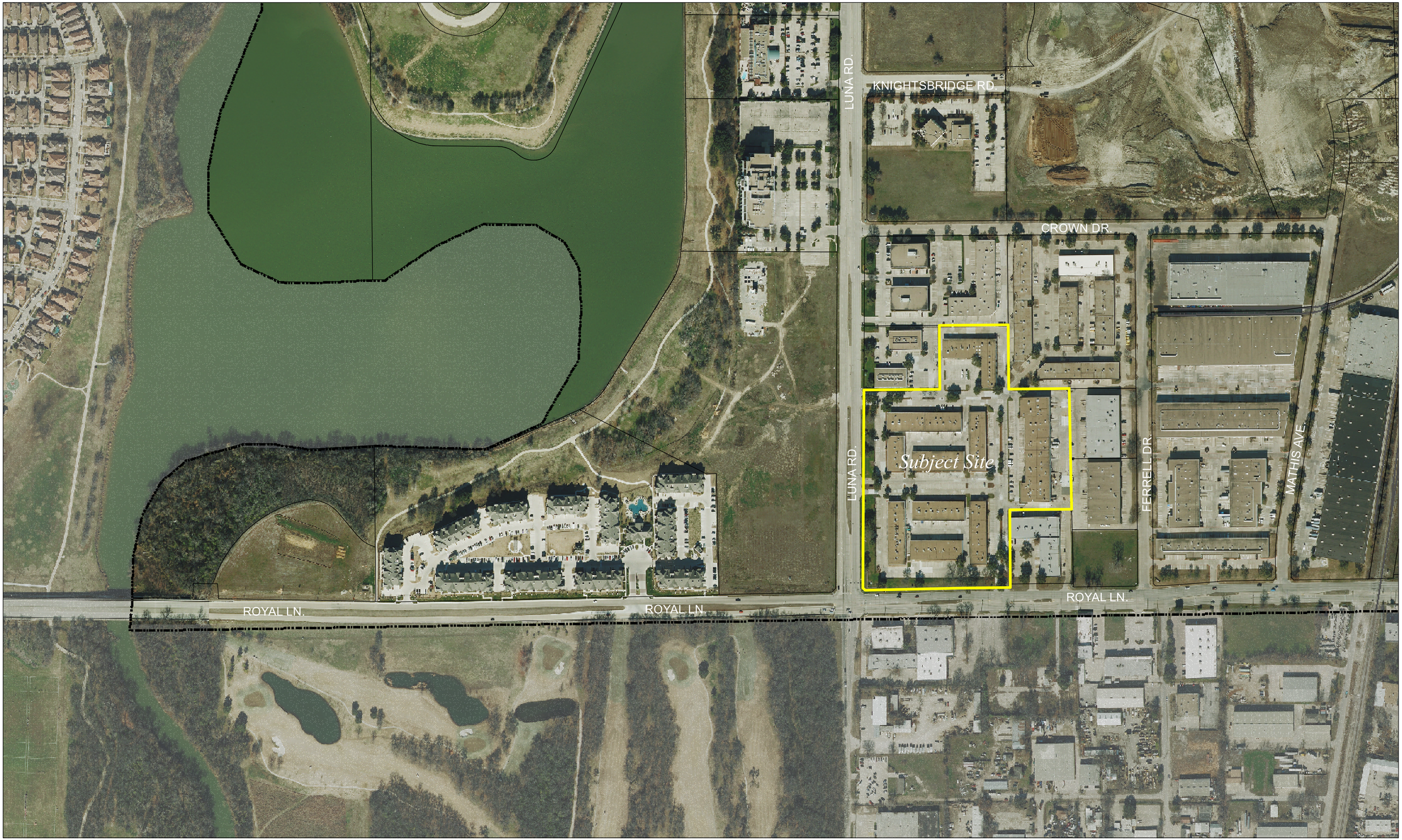
Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data. For pictorial reference only.

0 405 810 Feet

NORTH

Document Path: Z:\Zoning Cases\2016 cases\16-SU-17 1801 Royal Ln (Luna Taps qualif rest)\GIS\Location Map.mxd

Date: 10/14/2016



Parcel Property Boundaries

City Limit

16-SU-17 - Aerial Map
1801 Royal Lane

FARMERS BRANCH

Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data. For pictorial reference only.

0 405 810 Feet

NORTH

Document Path: Z:\Zoning Cases\2016 cases\16-SU-17 1801 Royal Ln (Luna Taps qualif rest)\GIS\Aerial Map.mxd

Date: 10/14/2016

Information MEMORANDUM

TO:	Mayor and City Council
FROM:	Charles Cox City Manager
DATE:	December 5, 2016
SUBJECT:	Proposed Ordinance No. 3404 to approve a Specific Use Permit for a qualified restaurant located at 1801 Royal Lane

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Existing Conditions:

The subject property is located in the Westwood Business Park, which is situated east of Luna Road and north of Royal Lane (See Location Map). Westwood Business Park encompasses thirteen, existing buildings. Each building provides office, commercial or warehouse space. The suites range in size from 1,400 to 17,000 square feet. All of the buildings are one-story masonry structures. The proposed restaurant would be located in Building 7, closest to Luna Road (See Site Plan). Building 7 includes approximately 10,080 square feet. This business park was developed in 1981.

The property is located within the Planned Development No. 22 (PD-22) zoning district. This zoning district allows for a variety of commercial and light industrial land uses. The site is bounded on the south and east by the Westwood Business Park. To the north is the Crown Plaza office building. To the west of the site is the Waters Edge multifamily development.

Proposal/Site Design:

The applicant, Luna Taps, is proposing a new restaurant to serve the large multi-family residential population found in the area. The applicant is also requesting permission to sell alcohol to its customers with their meals. The restaurant would be a “neighborhood bar and grill” concept and would provide a variety of food and drinks.

The proposed restaurant would occupy approximately 2,882 square feet (see Floor Plan). The restaurant would include a kitchen and bar area, as well as indoor and outdoor seating areas. The proposed bar space is approximately 493 square feet, which is 17% of the gross floor space. The

indoor seating arrangement includes approximately 78 seats. The restaurant has also proposed a "To-Go" area and entry at the eastern façade. The main entry for the restaurant is on the western corner of the building.

The applicant also is proposing to add two outdoor patio dining areas, along the southern and western portions of the building (see Site Plan). The proposed, southern outdoor patio area would be approximately 440 square feet with a concrete floor. This dining area would allow for 36 additional seats. The patio area will be enclosed with a 3' tall metal fence and gate. The patio will not be covered but will be partially shaded by an existing tree. In order to create this outdoor patio area, the applicant is proposing to remove three existing parking spaces.

The proposed, western outdoor patio area would be approximately 364 square feet with a concrete floor and a covered "sunbrella" material roof. This dining area would allow for 18 additional seats. The patio area will be enclosed with a 3' tall metal fence and gate. The total indoor and outdoor seating for the proposed restaurant is approximately 132 seats.

The applicant has proposed the creation of a new 4' sidewalk. The sidewalk will act as a connection from Luna Road to help create better pedestrian access to the restaurant from the street (see Site Plan.)

Parking:

There are approximately 624 parking spaces which serve the total, existing Westwood Business Park. The city requires a 1:3 seats, parking ratio for restaurants. Therefore, the Luna Taps restaurant is required to provide 44 parking spaces. There are approximately 54 total parking spaces in direct proximity to the restaurant that can be utilized by its patrons (see Site Plan). Dues to the business hours of the restaurant, staff feels there is adequate parking to serve the restaurant use as well as the commercial and office uses located in the business park.

Landscaping:

The applicant plans to install additional landscaping in the parking island along the south end of the building. The landscaping is a combination of shrubs, rocks and native grasses (see Site Plan).

Signs:

Signs proposed for the restaurant consist of three wall signs; one on the west elevation approximately 114 square feet and two on the south elevation approximately 26 and 47 square feet (see Exterior Elevations). The proposed exterior signage complies with the City's sign ordinance. Per the City's requirements, the restaurant will not be allowed to advertise on any signage that they sell alcoholic beverages.

Operation:

The restaurant's hours of operation are Monday through Sunday 11:00 am to midnight.

The applicant has submitted an Alcohol Awareness Program, which establishes a comprehensive alcohol policy for the restaurant. They agree to abide by the City's requirements for alcohol sales, as well as the Texas Alcoholic Beverage Commission. (See Alcohol Awareness Plan).

Under Ordinance 2768 the following requirements must be met in order for a restaurant to serve alcoholic beverages:

(a) the bar/holding area does not exceed 20% of a restaurant;
(b) at least 60% of the total gross sales must be attributable to food and non-alcoholic beverage sales;
(c) there are no exterior signs or signs visible form the restaurant's exterior advertising the sale of alcoholic beverages;
(d) there is no drive-in curb service; and
(e) an alcohol awareness program is submitted with the application.

The applicant has met all of these above requirements.

Comprehensive Plan:
The West Side Plan identified the recommended use of the subject property and surrounding area as Light Industrial and Office. The Plan states the restaurant is located within the Industrial Districts regional centers which is desirable for retail and restaurant business. Also given the concentration of multi-family developments in this area, restaurant use is desirable.

Public Response:
Nine public notification letters were mailed on November 1, 2016. Two zoning notification signs were also posted on the site that same day. As of December 5, 2016 no letters of opposition to this Specific Use Permit request have been received by the City.

Possible Council Action:

1. I move to adopt Ordinance No. 3404.
2. I move to adopt Ordinance No. 3404 with the following modification(s)…
3. I move to table the item or take no action.

ORDINANCE NO. 3404

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF FARMERS BRANCH, TEXAS, BY GRANTING A SPECIFIC USE PERMIT TO ALLOW THE ON-PREMISE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES WITHIN A QUALIFYING RESTAURANT FOR AN APPROXIMATELY 2882 SQUARE FOOT PORTION OF BUILDING AND ADJACENT PATIO AREAS IN LOT 1, WESTWOOD PARK ADDITION (COMMONLY KNOWN AS 1801 ROYAL LANE, SUITE 700) LOCATED WITHIN THE PLANNED DEVELOPMENT NUMBER 22 (PD-22) ZONING DISTRICT; PROVIDING FOR THE APPROVAL OF THE SITE PLAN ATTACHED AS EXHIBIT "A"; PROVIDING FOR ADDITIONAL SPECIAL CONDITIONS; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND ($2,000.00) DOLLARS; PROVIDING FOR INJUNCTIVE RELIEF; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Farmers Branch and the governing body of the City of Farmers Branch, in compliance with the laws of the State of Texas and the ordinances of the City of Farmers Branch, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, the governing body, in the exercise of the legislative discretion, has concluded that the Comprehensive Zoning Ordinance and Zoning Map should be amended;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The Comprehensive Zoning Ordinance and zoning map of the City of Farmers Branch, Texas, be, and the same is hereby amended, so as to grant a change in zoning by granting a Specific Use Permit with special conditions for the on-premise sale and consumption of alcoholic beverages within a qualifying restaurant for an approximately 2882 square foot portion of the building depicted on Exhibit "A," attached hereto and incorporated herein by reference, said building being located in property described as Lot 1, Westwood Park, an Addition to the City of Farmers Branch, Texas, according to the plat recorded at Volume 82222, Page 2758, Deed Records, Dallas County, Texas, (more commonly known as 1801 Royal Lane, Suite 700)("the Property") which is located within the Planned Development Number 22 (PD-22) zoning district.

SECTION 2. If the Property is used and developed in accordance with the rights granted

pursuant to Section 1, above, the Property shall conform in operation, location and construction to the development standards specified within the Planned Development No. 22 (PD-22) zoning district as well as the following special conditions:

A. The sale of alcoholic beverages shall at all times be in full compliance with all requirements of laws and regulations of the State of Texas and the City of Farmers Branch Comprehensive Zoning Ordinance, as amended or succeeded, relative to such use;

B. The rights granted pursuant to Section 1 of this Ordinance shall be limited to the portion of the building and the outdoor patio areas located on the Property depicted on Exhibit "A," attached hereto and incorporated herein by reference;

C. No service or consumption of alcoholic beverages may occur on the outdoor patio areas unless and until installation of the three foot (3.0') tall metal fences shown in Exhibit "B," attached hereto and incorporated herein by reference, has been completed. The sale of alcoholic beverages on the patio area shall cease if any portion of the fences set forth Exhibit "B" is removed and not replaced.

D. The sales and service of alcoholic beverages on the Property shall at all times be in conformance with the Alcohol Awareness Program set forth in Exhibit "C," attached hereto and incorporated by reference; and

E. No amplified live or recorded music shall be permitted on the exterior of the Property.

SECTION 3. The Property shall be used only in the manner and for the purposes provided by the Comprehensive Zoning Ordinance of the City of Farmers Branch, as heretofore amended and as amended herein.

SECTION 4. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Farmers Branch and the provisions of this Ordinance as applicable to the use and development of the Property, the provisions of this Ordinance shall be controlling.

SECTION 5. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 6. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 7. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning

Ordinance of the City of Farmers Branch, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars ($2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 8. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THIS THE 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____

Amy Piukana, City Secretary

APPROVED:

_____

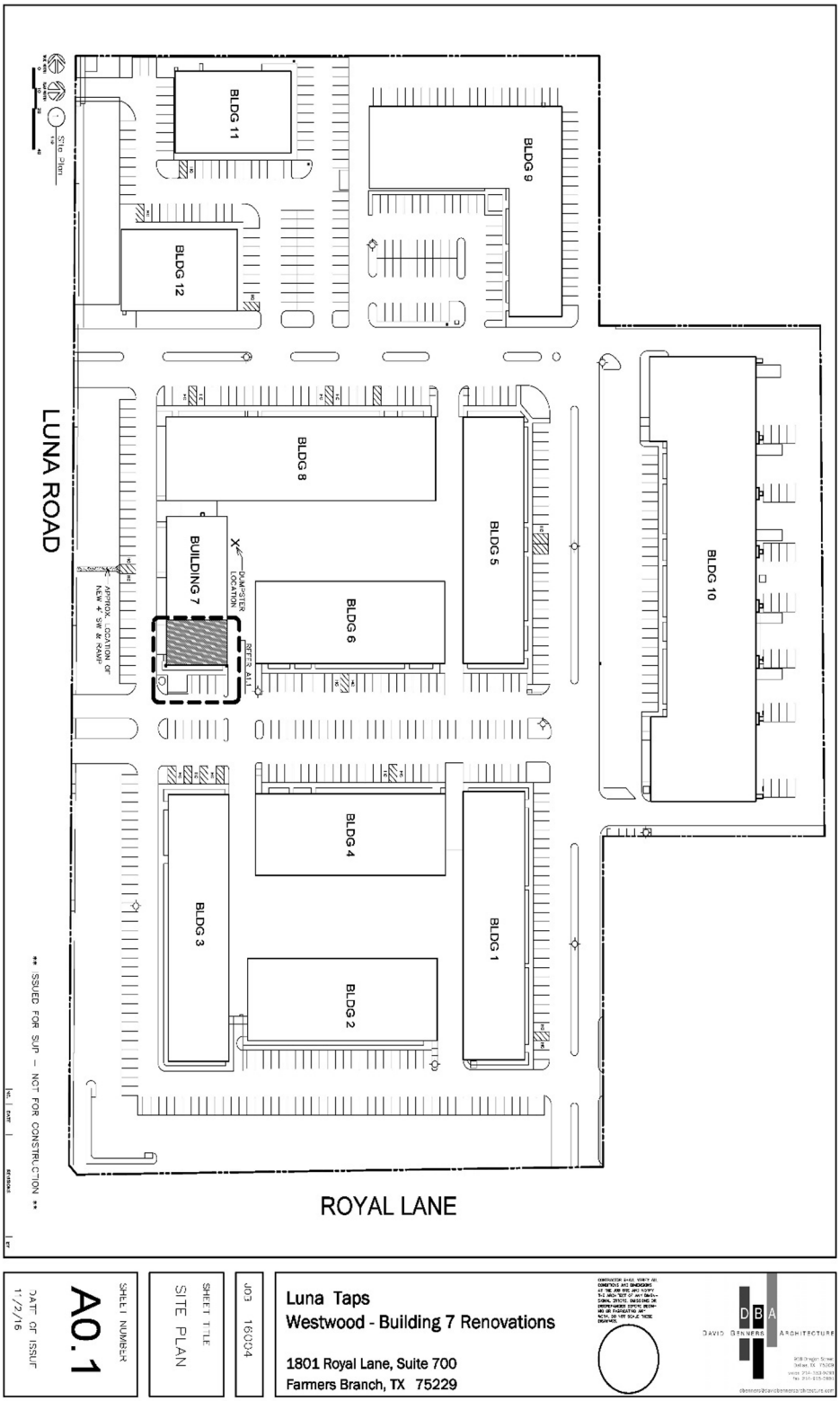
Bob Phelps, Mayor

APPROVED AS TO FORM:

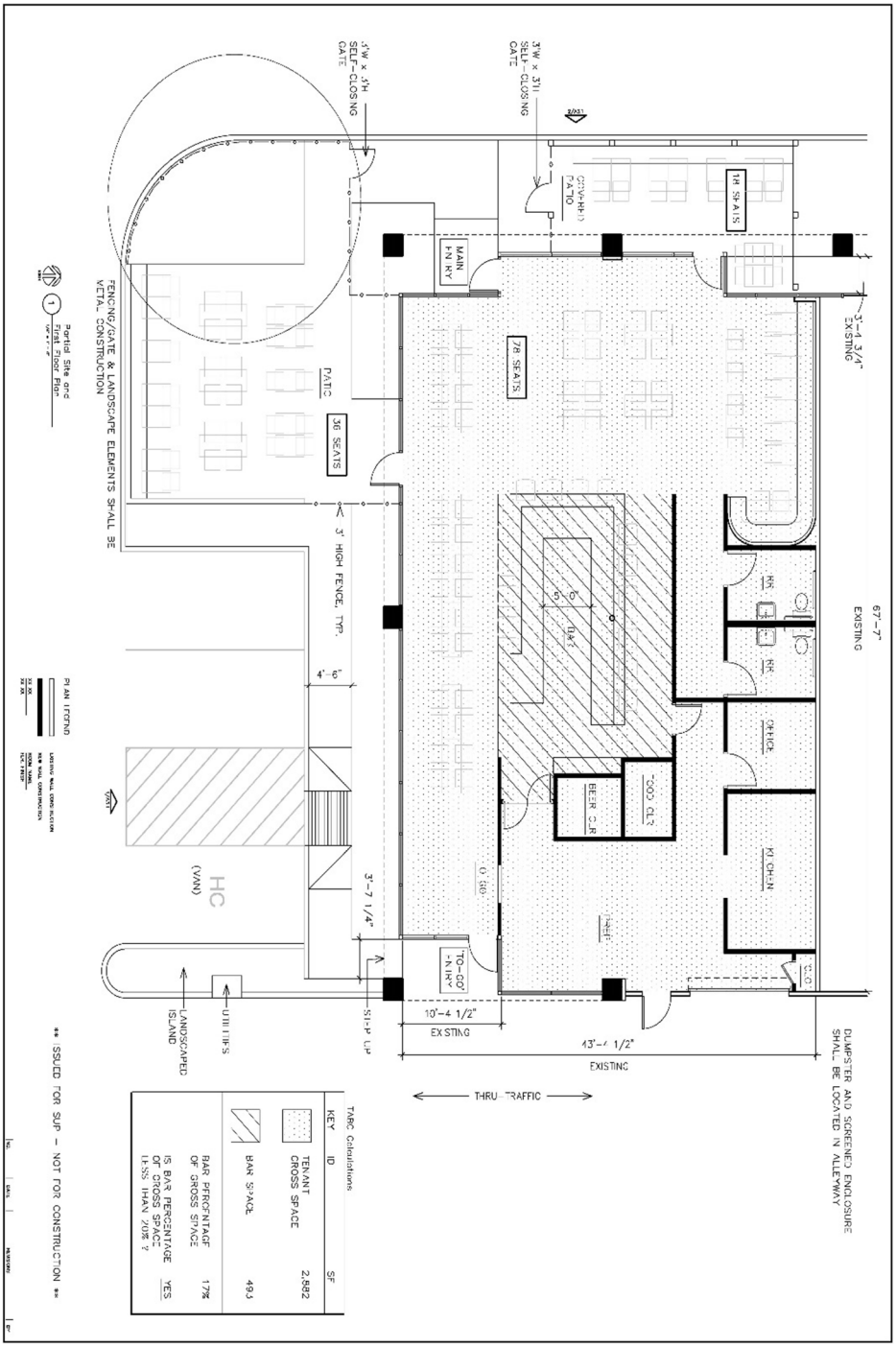
_____

Peter G. Smith, City Attorney
(kbl:11/30/16:81925)

Ordinance No. 3404
Exhibit "A" – Depiction of Property Location



Ordinance No. 3404
Exhibit "B" – Floor Plan



SHEET NUMBER
A1.1
DATE OF ISSUE
11/2/16

FIRST FLOOR DEMO AND FLOOR PLAN

JOB 16004

Luna Taps
Westwood - Building 7 Renovations

1801 Royal Lane, Suite 700
Farmers Branch, TX 75229

DBA
DAVID BENNETT ARCHITECTURE

Ordinance No. 3404
Exhibit "C" - Alcohol Awareness Program

LUNA TAPS

1801 W. ROYAL LANE

FARMERS BRANCH, TEXAS

Luna taps

Alcohol awareness program

Luna taps requirement for selling alcoholic beverages

1. **Luna taps will abide by Texas alcoholic beverage code.**
2. **Luna taps will abide by the Texas penal code**
3. **Any unlawful acts related to the sale or consumption of alcoholic beverages will be reported to the police.**
4. **Customers requesting to purchase alcoholic beverages will provide a legal picture ID, of one of the following: current Driver's license, Military ID, State ID or Passport.**
5. **All customers purchasing alcoholic beverages must be at least 21 years of age.**
6. **All Luna taps staff that directly or indirectly handles alcoholic beverages will be at least 21 years of age.**
7. **Servers will be required to take the TABC Seller Training Program.**
8. **Alcoholic beverages will only be served inside the restaurant premises and the restaurant designated patio area.**
9. **Anyone that is, or is believed to be intoxicated will not be served alcoholic beverages.**
10. **Luna taps will make every effort to call a cab for anyone who is intoxicated.**
11. **No firearms will be allowed inside Luna taps**

Ordinance No. 3404
Exhibit "C" - Alcohol Awareness Program (cont.)

12. Luna taps will not hang exterior signs advertising the sale of alcohol.
13. Luna taps gross sale of food shall be at least 60% of the gross sales for each quarterly reporting period.
14. Luna taps shall maintain and keep records necessary to demonstrate compliance with the minimum 60% food and non-alcoholic beverage sales of the restaurants total gross receipts.

SITE PHOTOGRAPHS

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-105

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.1

Consider approving Resolution No. 2016-105 authorizing the City Manager to negotiate and execute the second amended and restated agreement for library services with Library Systems & Services; and take appropriate action.

BACKGROUND:
In 2011 the City outsourced the operation of the Manske Library to Library Systems & Services Incorporated (LSSI). In 2013, City Council renewed the agreement for a 3-year term that expires December 31, 2016. During the term of the agreement LSSI was sold to Argosy Private Equity and is now called Library Systems & Services (LSS). From the City's perspective, this change in ownership has not affected the quality of Library services received.

DISCUSSION:
City Administration will give a brief presentation to review the current 3-year agreement and the highlights of the proposed new agreement.

The new agreement is a 5-year contract that would begin January 1, 2017 and expire December 3, 2021. It includes a 2.5% ($30,233.33), increase from the previous year, attributed to the rise in the Employee Cost Index (ECI) for the DFW Metroplex. The proposed annual cost for 2016 is $1,239,566.33 The price of the agreement is negotiated on a yearly basis, or may renew at the same amount as the previous year, plus an additional amount equal to the percentage increase in the ECI but not to exceed 5%.

This new agreement includes, the purchase and installation of equipment that will allow the Library to offer automated self check-in to patrons, valued at $72,519.60. The equipment is the second phase of the automated self check infrastructure common in modern libraries. The equipment is being provided at LSS cost, it will be amortized over the life of the contract. Should the City discontinue using LSS, the City would be responsible for the remaining balance owed. Once the five-year amortization period is over, LSS will turn over the ownership of the equipment to the City.

RECOMMENDATION:
The Farmers Branch Manske Library Board received a presentation at their November 10 meeting and unanimously recommended the approval of this agreement with LSS to operate the Manske Library.

POSSIBLE COUNCIL ACTION:
1. I move to approve Resolution No. 2016-105, as presented.

2. I move to approve Resolution No. 2016-105, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Resolution No. 2016-105
2. Manske Library Contract Renewal Presentation
3. Contract

RESOLUTION NO. 2016-105

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING NEGOTIATION AND EXECUTION OF SECOND AMENDED AND RESTATED AGREEMENT FOR LIBRARY SERVICES WITH LIBRARY SYSTEMS & SERVICES, LLC; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City entered in a Library Services Agreement with Library Systems & Services, LLC ("LSS"), on January 1, 2011 (the "Original Agreement") relating to the operation and maintenance of the Farmers Branch Manske Library by LSS on behalf of the City, the term of which ended December 31, 2013; and

WHEREAS, the City entered in a First Amended and Restated Library Services Agreement with LSS, on January 1, 2014 (the "First Amended Agreement") extending the term of the original Agreement and amending certain terms and provisions, the initial term of which ends December 31, 2016; and; and

WHEREAS, City Administration recommends entering into a Second Amended and Restated Library Services Agreement with LSS further extending the term of the Original Agreement as amended and extended for an initial term ending December 31, 2021, and providing for certain amendments to the Agreement to better set forth the responsibilities of the parties regarding Library operations and management; and

WHEREAS, the City Council of the City of Farmers Branch, Texas, finds it to be in the public interest to concur in the City Administration's recommendation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Manager is authorized to negotiate and sign on behalf of the City the Second Amended and Restated Agreement with LSS extending the term of the Agreement to December 31, 2021, and amending certain terms and provisions of the Agreement.

SECTION 2. This Resolution shall be effective immediately upon approval.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 15TH DAY OF NOVEMBER, 2016.

ATTEST: APPROVED:

_____ _____

Amy Piukana, City Secretary Bob Phelps, Mayor

APPROVED AS TO FORM:

_____

Peter G. Smith, City Attorney
(kbl:11/6/16:81185)

SECOND AMENDED AND RESTATED LIBRARY SERVICES AGREEMENT

This **SECOND AMENDED AND RESTATED LIBRARY SERVICES AGREEMENT** ("Agreement") is made as of the ___ day of _____, 2016, between **LIBRARY SYSTEMS & SERVICES, LLC, ("LSS")** a Maryland limited liability company with a mailing address at 2600 Tower Oaks Blvd. Suite 510, Rockville, Maryland, 20852, Attention: Paul Colangelo, President, an e-mail address of paul.colangelo@lsslibraries.com, and a fax number of (301)540-5522 (LS&S) and **CITY OF FARMERS BRANCH, TEXAS**, a Texas home rule municipality, with a mailing address at 13000 William Dodson Parkway, Farmers Branch, Texas 75234, Attention: City Manager, an e-mail address at charles.cox @farmersbranchtx.gov and a fax number of 972-247-5939 ("City"). LSS and City are each sometimes referred to herein as a "Party" and collectively, the "Parties".

RECITALS

WHEREAS, the Parties are signatories to that certain *Library Services Agreement* dated December 8, 2010, and effective January 1, 2011, ("the Original Agreement") regarding professional services to be provided by LSS to City relating to the maintenance and operation of the Library (as defined below); and

WHEREAS, the Original Agreement was amended, restated, and replaced by that certain *First Amended and Restated Library Services Agreement* dated December 5, 2013, and effective January 1, 2014, ("the First Amended and Restated Agreement"); and

WHEREAS, the Term of the *First Amended and Restated Agreement* ends on December 31, 2016; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of amending and restating their agreement to various provisions of the First Amended and Restated Agreement,, including, but not limited to, extend the term of the First Amended and Restated Agreement,;

NOW, THEREFORE, for and in consideration of the promises, covenants, and conditions set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Services and Warranty.

(a) Services. During the Term of this Agreement, LSS will provide the labor and management services described on Schedule A (collectively, "Services").

(b) Warranty on Services. LSS warrants that it will perform the Services with at least the care, diligence and expertise generally accepted in the operation of public libraries of similar sized collection and material circulation in the Dallas/Fort Worth Metroplex.

(c) Provision of and Warranty on Goods. LSS may purchase goods for use in the management and operation of the Farmers Branch Manske Library ("Library"). At LSS's sole discretion, LSS may select sources of goods, which may include affiliates of LSS. Title to all items purchased by LSS shall at all times reside in City. If LSS furnishes any goods to City, LSS will use good faith efforts to extend the manufacturer's warranty, if any, to City. **There are no other warranties, express or implied, including warranties of merchantability or fitness for particular purpose.**

(d) Response to Request for Proposal. On or about October 8, 2010, LSS delivered to City that certain *LSS Proposal for Operation and Administration of the Farmers Branch Manske Library* ("the Proposal"), the contents of which are incorporated herein by reference and shall constitute additional provisions to this Agreement. In the event of any conflict between the warranties, representations, and obligations of LSS set forth in the Proposal and contained in this Agreement, the warranty, representation, or obligation most favorable to City shall apply.

2. Term and Termination.

(a) Term. The term of this Agreement shall commence on January 1, 2011, ("Effective Date"), and continue in force until December 31, 2021 ("Expiration Date"), unless extended or terminated earlier in accordance with this Section 2.

(b) Termination for Convenience. Either Party may terminate this Agreement without cause by giving the other Party not less than ninety (90) days written notice prior to the proposed date of termination.

(c) Termination for Default. If either Party breaches any material provision of this Agreement and fails to correct the breach on or before the thirtieth (30th) day after receiving written notice specifying the breach (or, if the breach cannot be corrected before the end of the thirtieth (30th) day, fails to progress diligently towards correction), then the other Party may terminate this Agreement by giving written notice to the breaching Party, except that LSS shall have the right to terminate this Agreement if City fails to pay any amount due LSS and such failure continues for thirty (30) days after written notice thereof.

(d) Renewal. Subject to the termination provisions in accordance with this Section 2, this Agreement shall automatically renew and the Expiration Date extended for successive renewal periods of one (1) year each after the Term, unless written notice of intent to not renew is given not later than ninety (90) days prior to the then current Expiration Date, as extended.

3. Price and Payment.

(a) Price. LSS shall perform the Services for the Charges (exclusive of any current or future sales or use taxes charged to LSS for goods purchased for City) set forth in Section E of Schedule A.

(b) Payments. LSS shall invoice City prior to each month's service for the monthly amount set forth in Section E of Schedule A. Invoices shall be paid by bank wire transfer to a bank account designated by LSS on or before the fifth (5th) day of such month (the "Due Date"). Amounts not paid by City to LSS within thirty (30) days after the Due Date shall be subject to interest at the rate set forth in Ch. 2251, Texas Government Code ("Prompt Payment Act"). Both Parties recognize and agree that City is exempt from sales and use taxes. City will furnish to LSS, in advance, a valid certificate of exemption from such taxes.

(c) Price Adjustment. If after the Effective Date a change in law or regulation imposes a new fee or tax that must be paid by LSS when purchasing goods pursuant to this Agreement, title to which goods shall belong to City, City agrees to pay such taxes to the extent City is not exempt from same.

4. Insurance and Indemnification.

(a) Insurance. During the term of this Agreement, LSS shall maintain in force at its own expense the following insurance:

(1) Comprehensive general liability insurance coverage of at least one million dollars ($1,000,000) combined single limit.

(2) Automobile liability insurance covering any vehicles owned and/or operated by LSS, its officers, agents, and employees, and used in the performance of this Agreement; and

(3) Statutory Worker's Compensation Insurance covering all of Contractor's employees or subcontractors involved in the provision of services under this Agreement.

All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "B" by AM Best or other equivalent rating service, or be approved by the City Risk Manager.

(b) Certificates of Insurance. All insurance and certificate(s) of insurance shall contain the following provisions:

(i) name City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers' Compensation Insurance;

(ii) provide for not less than thirty (30) days prior written notice to City for cancellation, non-renewal, or material change of the insurance;

(iii) provide for a waiver of subrogation in favor of City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(c) Indemnification. LSS HEREBY AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, EMPLOYEES, AND AGENTS, (HEREINAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, LIABILITY OR DAMAGE OF ANY CHARACTER, AND FROM AND AGAINST COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS, CLAIMS, LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, ARISING FROM ANY INTENTIONAL OR NEGLIGENT ACT, ERROR, OMISSION OR NEGLECT OF LSS, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER LSS'S DIRECTION AND CONTROL, AND ARISING OUT OF, OCCURRING IN CONNECTION WITH, RESULTING FROM OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES CALLED FOR BY THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A

COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, LSS SHALL BE OBLIGATED TO INDEMNIFY THE INDEMNITEES AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY.

(c) Property Insurance. City shall be solely responsible for keeping its buildings and their contents insured against loss, cost, damage or expense resulting from fire, explosion or any other casualty ("Casualty Insurance").

(d) Subcontractors. Unless covered as a named insured on the insurance policies purchased by LSS pursuant to this Section 4, any subcontractor authorized in accordance with Section 7(b), below, to perform services pursuant to this Agreement on City's property shall comply with the requirements of this Section 4(a) and (b).

5. Information, Intellectual Property.

(a) Information. In the performance of this Agreement, LSS may be exposed to information regarding the identity of City's patrons, City may be exposed to information regarding LSS's proprietary library management techniques, and either Party may be exposed to other information designated in writing by the disclosing Party as confidential (collectively, "Confidential Information"). Each Party shall: (1) use the same care to protect the other Party's Confidential Information from disclosure that such Party uses to protect its own information of like importance; (2) limit duplication of Confidential Information to the extent needed to perform this Agreement; (3) disclose Confidential Information only to employees having a need to know in connection with performance of this Agreement, and who are informed of the contents of this provision prior to disclosure. This provision shall survive termination or expiration of this Agreement; and, on such termination or expiration, each Party shall return all Confidential Information, including all copies, to the owner of such information, and if requested, shall certify in writing that all such information has been returned. Because the damage resulting from a breach of this provision would be difficult or impossible to quantify and remedy at law, in case of such breach, or the threat of such breach, the Party whose Confidential Information is threatened to be disclosed shall be entitled to injunctive or other equitable relief.

(b) Intellectual Property. Nothing in this Agreement confers any license or right to use any trademark, service mark, copyright or other intellectual property right, whether now owned or hereafter developed, of either Party.

(c) Public Information Act Compliance. LSS acknowledge that City is required to comply with the provisions of the Texas Public Information Act. (Ch. 552, Tex. Govt. Code, as amended). Notwithstanding subsection (a), above, City shall not be in default of this Agreement if the Office of the Texas Attorney General directs City to disclose information to a requestor that LSS believes to be proprietary or confidential. In the event City receives a request for disclosure of any information identified by LSS as confidential or proprietary pursuant to the Texas Public Information Act, City agrees to notify LSS of such request in accordance with Tex. Govt. Code §552.305, as amended. LSS shall be solely responsible for submitting any arguments to the Texas Attorney General in support of the LSS's position that the information should not be disclosed to the public pursuant to Tex. Govt. Code §552.110 or any other applicable provision of the Texas Public Information Act. City shall

not be required by this Agreement to file an appeal of any determination of the Office of the Texas Attorney General that information deemed by LSS to be confidential or proprietary must be disclosed to the person requesting the information.

(d) Release of Patron Information. LSS understands and acknowledges that, subject to certain exceptions, Tex. Govt. Code §552.124 makes confidential as a matter of law a record of a library supported in whole or in part by public funds that identifies or serves to identify a person who requested, obtained, or used a library material or service. LSS agrees to indemnify, defend, and hold City harmless regarding any claims or damages by any person relating to the intentional or negligent release of Library records relating to that person in violation of federal or state law or regulation, including, but not limited to Tex. Govt. Code §552.124. LSS further agrees to have (i) all LSS employees and (ii) all Library volunteers who may have access to Library user information to sign an acknowledgment and agreement regarding the treatment of Library user information on a form approved by City (which approval shall not be unreasonably withheld) prior to any such person commencing any work or service at the Library.

6. City's Obligations.

(a) Use of Facilities. City shall make available to LSS without charge, solely for LSS's use in performing the Services, all properties, facilities, equipment, collections, supplies, records, files and data used or useful in the operation of the Library that is in City's possession, custody or control as of the date hereof. City reserves all ownership rights in such properties and LSS shall return such properties to City, ordinary wear and tear excepted, at the termination or expiration of this Agreement.

(b) Library Maintenance and Repair. Responsibility for the maintenance and repair of the Library shall be delegated between the Parties as follows:

(1) City shall be responsible for all building maintenance and repairs relating to damages or malfunctions not attributed to an intentional or negligent act of LSS's employees or contractors or operational changes which are controlled by LSS. City shall further be responsible for the following functions and services.

i. Pest Control;
ii. Janitorial Services;
iii. Window Cleaning Services;
iv. Carpet Cleaning (yearly service);
v. Alarm system monitoring/response/maintenance;
vi. Set up for City-sponsored meetings;
vii. Christmas exterior lighting;
viii. Landscape maintenance;
ix. De-icing front sidewalks; and
x. Fire alarm/fire extinguishers inspections.

(2) LSS shall be responsible for the following functions or services:

i. Completing daily/weekly maintenance inspection checklist and reporting all identified issues and maintenance needs;

ii. Ensuring litter around building and parking lot is picked on a daily basis;

(3) Except as otherwise provided herein, City shall be responsible for maintenance and repairs to the structural components and systems of the Library including, but not limited to, exterior and interior walls, windows, roof, ceiling, plumbing, electrical, heating and air conditioning system, sidewalks, and parking areas.

(4) LSS shall be responsible for maintenance and repairs to the Library relating to damages or malfunctions resulting from (i) the intentional or negligent acts of LSS's employees or contractors, or (ii) operational changes which are controlled by LSS. All such maintenance and repairs shall be performed by or under the direction of City's Facilities Management Department at LSS's cost, who will be invoiced as follows:

i. If the work is performed in-house by City employees, parts and materials will be billed City's actual cost, and labor will be billed on a per hour basis ,at a rate based on the average salary and benefits of the City Facilities Technicians assigned to perform the work; and

ii. If the work is performed by a third party, LSS will be billed at the actual costs charged to City by the third-party.

(c) Requests for Maintenance and Repair. The Library Director shall insure all maintenance and repairs identified in Section 6(b)(2), above, are completed in a timely manner depending on the nature and extent of the repair maintenance required. With respect to any repair or maintenance for which City is responsible for performing pursuant to Section 6(b), above, regardless of whether the cost of such repair or maintenance belongs to City or LSS, the Library Director, or in the absence of the Library Director the LSS employee in charge of Library operations, shall, with respect to any repair or maintenance necessary to prevent imminent injury to any person or damage to property, immediately report to City's Facilities Management Department the need for the repair and shall, with respect to other types of maintenance or repairs, submit a work request to City's Facility Management Department pursuant to said department's guidelines.

(d) Library Building Improvements. LSS and City will work together to identify any building upgrades and improvements that will enhance the functionality and service level to Library patrons. Any improvements projects that City staff and LSS agree should be performed must first presented to City's Facility Management Department during the City's annual budget process to be considered for approval and funding.

(e) Security. City is responsible for providing security services for the Library and surrounding area.

(e) Utilities. City is responsible for payment of utilities at the Library facilities, including electricity, gas, water, waste disposal and recycling, telecommunications and Internet access.

(f) Policies. City shall be responsible for setting all policies that govern the operations of the Library.

(g) Revenue Generating Opportunities. During the term of this Agreement, LSS shall use reasonable efforts to develop proposals for the implementation of new revenue generating services, such as services to the business community, retail sales (books, gifts, refreshments, etc.) and other fee based services, to benefit the community, City and LSS ("Additional Services"). City shall have the final approval of all Additional Services, with such approval to not be unreasonably withheld, conditioned or delayed. Unless otherwise approved by City, the provision of these Additional Services shall not in any way substantially reduce the space or Library services provided prior to the implementation of the Additional Services. No Additional Services shall be implemented until City and LSS have entered a written agreement that includes, as a minimum, a written description of the Additional Services, the responsibility for costs related to providing such Additional Services, and the allocation of profit between the Parties that is generated by the Additional Services, if any.

(h) Damage or Destruction of Library; Suspension or Termination of Agreement. Notwithstanding Section 2(c), above, in the event of substantial damage to, or the destruction of, the Library and/or a substantial portion of the Library's collection, City may, at its sole discretion, immediately suspend the performance of this Agreement and/or terminate this Agreement upon providing written notice to LSS. In the event this Agreement is suspended or terminated, City agrees to pay LSS for Services rendered to the date of the suspension or termination of the Agreement pro-rated to the date of the suspension, but shall have no further obligation to LSS. If, following damage or destruction to the Library, City determines to temporarily relocate Library operations without terminating this Agreement, City and LSS agree to negotiate in good faith the fees to be paid by City to LSS for any reduced services provided by LSS during such temporary period and for any additional services that LSS provides upon the written agreement with City, if any, relating to the re-establishment of services following repair of the Library.

7. Miscellaneous.

(a) Independent Contractors. In all activities or services performed hereunder, LSS is an independent contractor and not an agent or employee of City. As an independent contractor, LSS shall be responsible for the services and the final work product contemplated under this Agreement. Except for materials furnished by City, LSS shall supply all materials, equipment, and labor required for the work and/or services to be provided under this Agreement. Subject to the policies established by City as provided in this Agreement, LSS shall have ultimate control over the execution of the work and/or services. LSS shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and City shall have no control of or supervision over the employees of LSS or any of LSS subcontractors. The relationship of the Parties shall at all times be that of independent contractors. Nothing herein shall be construed as establishing a partnership, joint venture, agency, employment, or other relationship.

(b) Assignment. Neither Party may assign this Agreement to a third party not affiliated with such Party without the prior written consent of the other Party. Notwithstanding the foregoing, LSS may subcontract or delegate portions of the Services; provided, however, in no case shall City be liable to any party other than LSS for any amount in excess of the price specified on Schedule A, plus any additional charges permitted hereunder, nor shall LSS be released from any obligation to comply with the provisions of this Agreement notwithstanding that performance of such provisions have been delegated to a third party. In no case shall LSS be authorized to subcontract any of LSS's obligations and duties pursuant to this Agreement unless such subcontract is in writing and is made expressly

subject to the provisions of this Agreement. LSS shall provide City copies of any subcontract entered pursuant to this Section 7(b) upon request of City.

(c) Limitation of Liability. In no case shall either Party be liable for any damages, losses, costs or expenses under or in connection with this Agreement, whether for breach of contract, tort or otherwise in excess of an amount equal to the lesser of (i) the actual damages suffered by the aggrieved Party, or (ii) the Charges for the twelve (12) month Period (as shown in Schedule A, as it may be amended) in which such damages were allegedly incurred. In no case shall either Party be liable for any punitive, exemplary, incidental, consequential, or special damages arising out of or in connection with this Agreement. Notwithstanding any other provisions of this Agreement, LSS shall have no responsibility for any worker's compensation or any other claims for incidents or costs, expenses or losses occurring prior to the Effective Date.

(d) Force Majeure. LSS shall not be liable for any failure or delay in performance of this Agreement due to causes beyond its control, including, but not limited to, strike, war or civil disturbance, weather emergency, or general failure of any necessary supply, service or utility.

(e) City's Representation. City represents and warrants that it has all necessary legal authority to enter into and perform this Agreement and that the person executing this Agreement on its behalf is legally authorized to do so.

(f) Notices. Notices required or permitted under this Agreement shall be effective upon the third (3rd) business day after deposit in First Class mail, or the next business day after deposit with a recognized overnight courier, or upon receipt if e-mailed or faxed to the respective e-mail addresses or fax numbers, if addressed to the Parties' respective addresses and marked to the attention shown on the first page of this Agreement, and, if to City, a copy to the following:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N Akard, Suite 1800
Dallas, Texas 75201

Email: psmith@njdhs.com
Fax: 214-965-0010.

(g) Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any suit arising from or related to this Agreement shall be brought in a state court in Dallas County, Texas.

(h) Severability. If any provision of this Agreement is conclusively determined to be illegal, invalid or unenforceable, then such provision shall be severed, and the remaining provisions of this Agreement shall be so construed to carry out, as nearly as legally permitted, the intentions of the Parties.

(i) Survival. The provisions of Sections 2, 3, 4, 5 and 6 shall survive any termination or expiration of this Agreement

(j) Entire Agreement; Amendments. This Agreement, inclusive of the schedules and exhibits attached hereto, contains the entire understanding of the Parties on the subject matter hereof and supersedes all prior statements and agreements on that subject. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the Parties except as may be otherwise provided therein.

(k) Non-Waiver. No failure or delay by either Party in enforcing any provision of this Agreement shall operate as a waiver. This Agreement may be modified or waived only in writing signed by the Party against whom such modification or waiver is sought to be enforced.

*(l) Counterparts***.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(m) Conflict of Interest. LSS shall not, directly or indirectly, acquire any interest which will conflict in any manner or degree with the performance of its services hereunder. In this connection, LSS, its employees and consultants shall make no political contributions to any political campaign or initiative affecting City.

Intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.

CITY OF FARMERS BRANCH, TEXAS	LIBRARY SYSTEMS & SERVICES, LLC
By:_____	By: _____
Charles Cox	Paul Colangelo
City Manager	President

City of Farmers Branch

Schedule A
Agreement for Library Administration and Operations

A. Statement of Work

LSS will administer the operations of City's library facilities (collectively, "Library"), including the accounting for, purchase of and payment for payroll services and goods and services from vendors for budgeted utilities, supplies, repairs, maintenance, Library Materials (as defined below) and Capital Items (as defined below) sufficient to operate the Library in accordance with the policies and guidelines approved by City.

LSS shall provide, by and through its own employees or independent contractors ("LSS Staff") any labor LSS deems necessary for the operation of the Library. The cost of the LSS Staff shall be paid by LSS and is included in the Operating Budget (as defined below). LSS shall have the sole and absolute right to hire and/or terminate the employment of the LSS Staff from time to time to perform work under this Agreement. LSS will provide the appropriate staffing levels to keep the Library open to the public during the following periods and for the following hours of operation:

Period	Hours of Operation			
	Mondays – Thursdays	Fridays	Saturdays	Sundays
January 1, 2017 to December 31, 2021	10 a.m. – 9 p.m.	10 a.m. –6 p.m.	10 a.m. -6 p.m	1 p.m. – 5 p.m.

In addition, LSS will update the long-range plan for City in cooperation with City, elected and appointed local officials, other community stakeholders ("Plan"). Using current professional standards and practice, the Plan will identify challenges and opportunities for the LSS Staff and corresponding strategic responses, including specific, measurable goals and objectives.

This Plan, when approved by City, will help govern the direction and focus of the LSS Staff in fulfillment of their mission of providing effective and efficient Library service to meet the personal, professional and lifelong learning needs of the citizens served by the Library.

B. Scope of Work

1. Governance – Develop and maintain effective working relationships with local City staff, elected officials, Library board members, other appointed officials and community groups such as the Friends of the Library, members of the genealogical society, etc.

2. Fiscal Responsibility:

    a. Develop and maintain effective and efficient financial procedures.

    b. Review all aspects of Library operation and service for efficiency and cost-effectiveness, while making changes as appropriate.

    c. Lead preparation of annual operating and capital budget requests.

d. Continue to seek innovative means of adding value to City at little or no additional cost, including the procurement of grants.

3. Management and Reporting:

   a. Prepare and provide regular reports to City, describing Library activities and recommending changes in policies, procedures and operations as necessary and appropriate.

   b. Prepare and provide timely statistical reports to City on Library activities.

4. Staff Development and Coaching:

   a. Support orientation and professional development of all LSS Staff. Each calendar year, the City shall designate, at its discretion, a one-day Library closure for Staff Training, coinciding with Presidents' Day. The Library will be closed to the public on this Staff Training Day, with appropriate notice of closure posted in advance by library staff.

   b. Provide leadership and guidance to maximize LSS Staff effectiveness in Library operations.

5. Public Services:

   a. Provide prompt, friendly and accurate assistance in the use of the Library.

   b. Provide prompt and accurate circulation, information and reference services.

   c. Provide requested materials promptly.

6. Collections – Provide high quality materials on a wide variety of subjects in varied formats for all age groups present in the community, according to established collection management plans.

7. Programming – Provide high quality, effective educational, recreational and cultural programs of interest to all age groups present in the community.

8. Information Technology:

   a. Develop and implement short and long range plans to procure, install and support sufficient hardware, software, network, telecommunications and other resources necessary to support the LSS Staff's mission.

   b. Implement RFID technology in the Library as detailed in Schedule B.

   c. The responsibilities of City and LSS with respect to the provision of technology support services shall be as set forth in Schedule C.

9. Marketing – Effectively disseminate information and promote use of the Library, resources and services.

   Facilities – Work with LSS Staff and local officials to ensure effective building maintenance by promptly identifying and reporting problems with the physical plant.

C. Excluded Services

LSS shall have no responsibility for administration, purchase or payment of, or any liability or duty to defend claims for:

1. Any goods or services, including payroll, that were rendered to City prior to the Effective Date.

2. Unfair labor practices, grievances, or any claims or litigation whatsoever arising out of the hiring and/or firing, layoff, subcontracting, assignment, reassignment or discipline of the Library staff not employed by LSS, provided that such claims have not resulted from negligence or wrongful acts of LSS under federal, state, or municipal law.

3. Any worker's compensation claims from any LSS Staff arising from injuries sustained prior to the Effective Date if such person was employed by City prior to the Effective Date.

4. Any costs of any voluntary retirement incentives, employee buyouts or other similar programs adopted by City.

5. Any Capital Items, which shall mean any capital acquisitions, improvements or replacements of any of the properties, facilities, equipment, furniture, furnishings, fixtures or leasehold improvements of the Library, except that such Capital Items proposed by LSS for its benefit (i.e. coffee bar, etc.) shall be approved by City and paid for by LSS.

6. Any amount of costs for unbudgeted repairs, maintenance and/or upkeep of Capital Items owned by City.

7. Any increases in the cost of insurance, utilities, rent, fuel and any state or federal tariff items over the rate for such items prevailing as of the date of execution of this Agreement.

D. Library Materials and Materials Handling Fee

On behalf and for the benefit of City, LSS will negotiate favorable discounts and prices from Library suppliers for the purchase of all Library materials, which shall include books, periodicals, newspapers, microfilms, electronic database subscriptions, standing orders, audio and video materials and cases, automated reference services, binding, cataloging and processing costs and the Materials Handling Fee (as defined below) (collectively, "Library Materials"). The responsibility for Library collection development policies will remain with City, and all Library Materials selections will be the responsibility of LSS. LSS will place orders with the suppliers and perform the accounting functions related to those orders, including prompt payment of the invoices. In accounting for the cost of the Library Materials, LSS shall include a fee of five percent (5.0%) of the cost of the Library Materials ordered ("Materials Handling Fee").

E. Operating Budget and Charges

Contract Period**	Charges ("Operating Budget")		Minimum Library Materials*
	Full Contract Period	Monthly	
January 1, 2017 to December 31, 2017	$1,239,566.333	$103,297.19	$210,000.00

*Total cost of Library Materials is not included in the Operating Budget and shall be determined annually by City. LSS will invoice City separately for Library Materials purchased and the invoices will include the Materials Handling Fee.

**"Contract Period" means each calendar year occurring during the term of this Agreement.

The Operating Budget is contingent on other existing contractual terms, obligations and responsibilities remaining the same except as expressly noted herein.

Not later than August 1 during each Contract Period, the Parties shall begin to negotiate in good faith the amount of Charges that will apply to the next Contract Period. If the Parties have not reached such agreement on or before October 1 of the then current Contract Period, the Charges for the next Contract Period, or such fewer number of months remaining until the Expiration Date ("Remaining Months"), shall be equal to the Charge for the last month of the then Current Period multiplied by twelve (12) or the number of Remaining Months, whichever is less, plus an additional amount equal to (a) the percentage increase in the Employee Cost Index (ECI) for the Dallas Metroplex region for the twelve (12) month Contract Period prior to the commencement of the new Contract Period not to exceed five percent (5%), multiplied by the Charge for the last month of the then current Contract Period, multiplied by (c) twelve (12) or the number of Remaining Months, whichever is less.

Intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.

CITY OF FARMERS BRANCH, TEXAS

By:_____
Charles S. Cox
City Manager

LIBRARY SYSTEMS & SERVICES, LLC

By: _____
Paul Colangelo
President

Schedule B

RFID Equipment

1.0 Equipment and Installation

1.1 LSS shall provide for the Library, subject to the terms and conditions contained herein, the RFID hardware, software and fixtures, including public and staff workstations and security gates for the Library entrance, described in Exhibit A attached hereto and shall affix RFID tags to the Library's collection items (collectively the "Equipment"). LSS shall, in concert with City, install the Equipment at the Library. There shall be no charge for LSS's labor.

1.2 City will install at the Library at its expense the electrical wiring and connections and telecommunications cable required for the Equipment.

2.0 Schedule

The work to be completed by City and LSS hereunder shall be performed in accordance with the following schedule during calendar year 2014:

Task	Responsible Party	Date
Collection tagging	LSS	January 24 – February 23
Wiring and telecommunications	City	Completed by January 23
Equipment installation	LSS & 3M	January 24 – February 23
Completion	LSS & City	End of February 2014

3.0 Ownership

3.1 Unless and until title to the Equipment is transferred by LSS to City in accordance with this Section 3.0, LSS shall own the entire right, title and interest in and to the Equipment.

3.2 If at any time LSS ceases to provide for the Library services of the same nature and scope as currently provided by LSS under this Agreement, whether such services are provided under this Agreement or otherwise, City shall have an option, exercisable by written notice to LSS no later than the effective date of such cessation, to purchase the Equipment for the residual value of the Equipment as of the effective date of such cessation in accordance with Exhibit B attached hereto. If City exercises such option, City shall pay LSS the applicable residual value as of the effective date of such cessation and LSS shall simultaneously assign to City the entire right, title and interest in and to the Equipment. If City does not exercise such option, LSS shall continue to own the Equipment and shall have the right to remove the Equipment from the Library.

3.3 If City has not previously purchased the Equipment under Section 3.2 and LSS continues to provide services for the Library similar to those under this Agreement, upon the expiration of five (5) years after the completion of its installation, LSS shall assign to City the entire right, title and interest in and to the Equipment.

Exhibit A to Schedule B

3M Library Systems Quotation

Today's Date:	05/23/13
Expiration Date:	08/21/13

3M Center, 224-2S-04
St. Paul, MN 55144-1000
Office: 800-328-0067 ext. 2
Fax: 800-223-5563

Quotations are good for 90 days. All dates are based on ship dates. Order must ship within the 90 day window. After 90 days, quotation expires. Contact 3M for a New Quotation.

Ship to: (Destination of Goods)	Bill to: (Agency to Invoice)
Library Name **Farmers Branch Manske Library**	Name **Library Systems & Service, LLC**
Address **13613 Webb Chapel Road**	Address **12850 Middlebrook Road**
City, State, Zip **Farmers Branch, Texas 75234**	City, State, Zip **Germantown, MD 20874-5244**
Contact Name **Belinda Jacks**	Accounts Payable Contact Name **Luther Brady**
Email Address belinda.jacks@farmersbranch.info	Email Address luther.brady@lssi.com
Phone # **972-247-2511**	Phone # **951-274-4515**
Fax #	Fax #
P.O. # and Signature (signature required if customer is using this form as an order)	Requested Delivery and Install Dates

Quantity	Description	Unit Price Good Through:	Extended Price 08/21/13
1	**3M Model 9102 Two Aisle RFID Detection System - Direct Mount, wired network connection**	**$11,995.00**	**$11,995.00**
	Stock # 70-0087-0001-8	$0.00	$0.00
4	Additional 4 years of service for 3M Model 9102	$900.00	$3,600.00
		$0.00	$0.00
2	**3M Model 8420 Selfcheck System - R-Series Kiosk (Black) Stock # 75-4700-3516-5**	**$9,985.00**	**$19,970.00**
8	Additional 4 years of service for 3M Model 8420	$900.00	$7,200.00
		$0.00	$0.00
3	**3M Model 895 RFID Pad Workstation**	**$1,795.00**	**$5,385.00**
	Stock # 75-4700-2303-9	$0.00	$0.00
12	Additional 4 years of service for 3M Model 895	$150.00	$1,800.00
		$0.00	$0.00
	NOTE - 5 years of service, installation and training	$0.00	$0.00
		$0.00	$0.00
126000	3M ISO RFID Tags - 50x50mm (6000 per case)	$0.175	$22,050.00
	Stock # 75-4700-3214-7	$0.00	$0.00
		$0.00	$0.00
6000	Stingray RFID Tags for CD/DVD Media (1000 per roll)	$0.68	$4,080.00
	Stock # 75-4700-3565-2	$0.00	$0.00
		$0.00	$0.00
4000	3M Hub RFID Tags for CD/DVD Media (4000 per case)	$0.25	$1,000.00
	Stock # 75-4700-3661-9	$0.00	$0.00
		$0.00	$0.00
3	3M Mobile RFID Conversion Station - 3 month rental (includes shipping)	$1,295.00	$3,885.00

Shipping and Handling billed as actual at time of shipment

Subtotal	**$80,965.00**
Shipping & Handling Fee	**$952.45**
Total *	**$81,917.45**

*** Applicable Sales Tax will be applied**

3M Sales Consultant	3M Sales Consultant Phone #	3M Customer Service Representative	3M Customer Service Representative Phone #
Shawn Brumley	940-367-9738	Edielsy Vega	800-328-0067 ext 2

Mail or Fax purchase order to the address above.

Terms are NET 30 Days from Date of Invoice.
Invoice is generated at the time of Shipment.

Comments:

A copy of Tax Exemption Certificate is required with purchase order for all tax exempt customers.

Exhibit B to Schedule B

Farmer's Branch
3M RFID System - Model 9102

Asset Cost & related expenditures: $81,917.45

Month	Amortization	Residual Value
1	$ 1,365.29	$ 80,552.16
2	$ 1,365.29	$ 79,186.87
3	$ 1,365.29	$ 77,821.58
4	$ 1,365.29	$ 76,456.29
5	$ 1,365.29	$ 75,091.00
6	$ 1,365.29	$ 73,725.71
7	$ 1,365.29	$ 72,360.41
8	$ 1,365.29	$ 70,995.12
9	$ 1,365.29	$ 69,629.83
10	$ 1,365.29	$ 68,264.54
11	$ 1,365.29	$ 66,899.25
12	$ 1,365.29	$ 65,533.96
13	$ 1,365.29	$ 64,168.67
14	$ 1,365.29	$ 62,803.38
15	$ 1,365.29	$ 61,438.09
16	$ 1,365.29	$ 60,072.80
17	$ 1,365.29	$ 58,707.51
18	$ 1,365.29	$ 57,342.22
19	$ 1,365.29	$ 55,976.92
20	$ 1,365.29	$ 54,611.63
21	$ 1,365.29	$ 53,246.34
22	$ 1,365.29	$ 51,881.05
23	$ 1,365.29	$ 50,515.76
24	$ 1,365.29	$ 49,150.47
25	$ 1,365.29	$ 47,785.18
26	$ 1,365.29	$ 46,419.89
27	$ 1,365.29	$ 45,054.60
28	$ 1,365.29	$ 43,689.31
29	$ 1,365.29	$ 42,324.02
30	$ 1,365.29	$ 40,958.73
31	$ 1,365.29	$ 39,593.43
32	$ 1,365.29	$ 38,228.14
33	$ 1,365.29	$ 36,862.85
34	$ 1,365.29	$ 35,497.56

35	$	1,365.29	$	34,132.27
36	$	1,365.29	$	32,766.98
37	$	1,365.29	$	31,401.69
38	$	1,365.29	$	30,036.40
39	$	1,365.29	$	28,671.11
40	$	1,365.29	$	27,305.82
41	$	1,365.29	$	25,940.53
42	$	1,365.29	$	24,575.24
43	$	1,365.29	$	23,209.94
44	$	1,365.29	$	21,844.65
45	$	1,365.29	$	20,479.36
46	$	1,365.29	$	19,114.07
47	$	1,365.29	$	17,748.78
48	$	1,365.29	$	16,383.49
49	$	1,365.29	$	15,018.20
50	$	1,365.29	$	13,652.91
51	$	1,365.29	$	12,287.62
52	$	1,365.29	$	10,922.33
53	$	1,365.29	$	9,557.04
54	$	1,365.29	$	8,191.75
55	$	1,365.29	$	6,826.45
56	$	1,365.29	$	5,461.16
57	$	1,365.29	$	4,095.87
58	$	1,365.29	$	2,730.58
59	$	1,365.29	$	1,365.29
60	$	1,365.29	$	0.00

Schedule C
Technology Support Services

Section 1: Purpose

The purpose of this Schedule C is to set forth additional terms of the Agreement regarding the responsibilities of the City, acting through its Information Services Department and LSS, acting through its employees assigned to operate the Library

Section 2: Definitions

The words and phrases used in this Schedule C shall have the same meaning as provided in the Agreement and/or Schedule A or B to the Agreement. In addition, the following words, phrases, and abbreviations shall have the following meanings:

"ILS" means Integrated Library System.

"IS Department" means City's Information Services Department.

"IS Director" means City Director of Information Services or designee.

"Library Director" means LSS's employee serving in the position of Director of the Library.

"Library Staff" means LSS's employees, including the Library Director, assigned by LSS to perform the on-site services provided by LSS to City pursuant to this Agreement.

"PC" is the abbreviation used for "personal computer."

"UPS" is the abbreviation for "uninterruptible power supply", which is a device that provides battery backup when the electrical power fails or drops to an unacceptable voltage level.

Section 3:Scope and Responsibilities

A. **<u>Administration and Management</u>**

(1) *Technology Coordination.* The IS Director will meet with the Library Director approximately every six months, at a mutually agreeable date and time, to discuss technology needs, upcoming initiatives and any service or support concerns relating to Library operations.

(2) *Technology Procurements.* City shall be responsible for establishing the appropriate standards and providing update or refreshment schedules for City provided hardware and software. Any non-standard hardware or software request must be justified and approved by the IS Director. City shall be responsible for purchasing and replacing all City-provided computing hardware and associated peripherals, including desktop PC's, laptops, monitors, mice, keyboards, printers, copiers, fax machines, scanners, etc.

(3) *Vendor service agreements and contracts.* City will enter into and maintain applicable service agreements or support contracts on City-provided computer equipment.

(4) *Technology planning and budgeting.* Library Staff shall be responsible for preparing a written annual Technology Plan that defines the needs and technology solutions to meet those needs. Library shall solicit and receive comments and suggestions from City staff and other interested parties identified by the City in defining existing problems, necessary changes, and/or desired enhancements to technology services at the Library. LSS, through the Library Director, and City, through the IS Director, shall work together to review and define the Library's technology needs for purposes of long range planning, development of mid-year and fiscal year budgets and inclusion in the annually updated Technology Plan.

(5) *Equipment inventory and lifecycle management.* The IS Department shall be responsible for maintaining and updating inventories of City-owned technology assets, including the software loaded on all City-owned computers. The IS Department shall be responsible for picking up and properly preparing City-owned equipment for disposal, including a process for ensuring that all data is removed from the equipment. The IS Department will update the inventory and provide inventory revisions to the Library Director upon request.

(6) *Audit and Review of Third-Party Network Connections.* Any third party systems or connections into the City's computer network must be pre-approved and will be subject to initial and periodic security review by the City. Any required corrective actions are to be implemented immediately, and closure is to be confirmed by the IS Director.

(7) *Internet content filtering management.* Library computers will be filtered for protection against Web-based threats, such as: malware, spyware, malicious sites, botnets and key loggers.

(a) LSS shall be responsible for administering and monitoring the Internet Filter that serves the Library patron computers in accordance with the policies and guidelines approved by the City.

(b) City shall be responsible for providing annual support and maintenance costs associated with the filtering software for public terminals.

(8) *Library website and URL namespace.* LSS shall be responsible for the setup and maintenance of the Library's content on the Library's web portal. City will maintain the annual renewal for the Library's URL namespace.

(9) *Support requests.* Incidents or requests for support should be reported to the IS Department Help Desk via any of the following means:

(a) User Support Portal - typing in URL in their internet browser (http://helpdesk)

(b) Calling 972-919-2571 (Ext. 2571)

(c) Emailing Helpdesk@farmersbranchtx.gov

If the incident is urgent, users should call the Help Desk, rather than using the support portal or emailing. IS Department support hours are 8:00 A.M. to 6:00 P.M. Monday through Thursday and 8:00 A.M. to 5:00 P.M. on Friday central time (except on City holidays). For urgent issues and outages, Library Staff may request IS Department emergency support outside of the standard support hours.

(10) *Compliance with IT Department policies and procedures.* LSS employees using City-provided computing technology and equipment will be expected to adhere to all City technology usage policies, requirements and standards.

(11) *City-provided user and email accounts.* The IS Department shall be responsible for creation and maintenance of all City domain user accounts and City e-mail accounts. The Library Director shall inform the IS Director as soon as possible after any staff terminations so that user access to core information technology resources can be revoked in a timely manner. To the extent feasible, the Library Director shall inform the IS Director in advance of any employment termination date of a Library Staff employee if there is reason to believe the employee whose separation from employment may result in a risk to the condition or security of the hardware, software, or data to which said employee has access.

(12) *Inventory Lists; Support Matrix*. IS Department staff and Library Staff shall coordinate and cooperate in the preparation and maintenance of an inventory list of the hardware, installed software, and other computing technology equipment located in or assigned for use as part of Library operations. The inventory shall set forth the owner or provider of the hardware, software or equipment. IS Department staff and Library Staff shall also coordinate and cooperate with respect to development of a support matrix relating to the above inventory setting forth the party responsible for obtaining and/or providing support relative to the hardware, software, and/or equipment shown on the inventory. The initial inventory of installed software subject to this Paragraph (12) is agreed to be as set forth in Exhibit A to this Schedule C.

B. <u>City Facility</u>

(1) *Security cameras.* City is responsible for the configuration and maintenance of the security cameras and associated equipment and network at the Library. Library Staff shall be responsible for reviewing security camera "video" in the event of an incident and contacting law enforcement authorities as appropriate.

(2) *Technology equipment rooms*. The IS Department is responsible for coordinating and working with City's Facilities Management Department to maintain power, UPS, air conditioning, environmental monitoring of the functioning equipment rooms.

(3) *Audio visual equipment.* City is responsible for providing maintenance and support for all new and existing audio/video, systems in use at the library. Support includes: projector lamps, supplies, parts, repairs, preventative maintenance and any necessary adjustments. LSS shall be responsible for failures caused by improper operation, cleaning or maintenance; accidents, damage, misuse or abuse caused by a LSS employee.

C. <u>Library Automation System (Polaris)</u>

LSS is responsible for providing and supporting the Polaris Integrated Library System (ILS), as well as other automation systems required for effective operation of the Library in accordance with the provisions of that certain *Addendum to Library Services Agreement for ILS Hosted Services* dated May 2, 2012, between City and LSS, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. LSS shall be responsible for acquisition, licensing and maintenance of any service/hardware required for the automation systems.

D. Desktop Computing

(1) *General.* All City-owned desktops and laptops will have antivirus and desktop management agents installed, where applicable. Only software provided by or approved by the City shall be loaded on City-owned computers. IS Department staff will not be required to install any additional software provided by LSS without proof of purchase or a copy of the license agreement. Any computer, server or network hardware provided by LSS or any third-party must be pre-approved by the IS Department and must adhere to City standards before being connected to City-owned computer hardware or the City's data network. Library Staff shall be responsible for ensuring that all City-owned equipment is well maintained, operated in accordance with the manufacturer's instructions and the City's direction. LSS shall be responsible for failures caused by improper operation, cleaning or maintenance; accidents, damage, misuse or abuse caused by a LSS employee

(2) *Staff computers.* The IS Department is responsible for the support of all City-provided computers which are designated for use by Library staff in performing their job functions. Support includes: installation of hardware and software, configuration, installation of operating system patches and updates, and troubleshooting of hardware, software or network connectivity problems. IS Department staff will provide assistance with supported applications which shall include: installation and updating of software; troubleshooting of common problems; and help with basic usage. IS Department staff will help users perform their job functions using computer technology but will not perform those functions for them. For example, IS Department will not create documents or design databases or web pages for users.

(3) *Patron computers.* Library Staff is responsible for the support of all City provided computers which are designated for use by library patrons which shall include operating system patches and updates; the troubleshooting of hardware, software or network connectivity problems. IS Department staff will work in conjunction with Library Staff to troubleshoot and resolve any connectivity issues that may be associated with the City-provided data network.

(4) *Other LSS owned and provided hardware/software*. Library Staff shall be responsible for the support and maintenance of all LSS-owned or provided hardware and/or software.

E. Server Hardware and Operating Systems

(1) *City provided Servers.* The IS Department is responsible for the support of all City-provided servers which are housed at the Library or designated for use by Library Staff or patrons, which shall include: installation, configuration, installation of operating system patches and updates and the troubleshooting of hardware, software or network connectivity problems. Library Staff shall be responsible for the licensing, administration and maintenance of the business applications running on this hardware.

(2) *LSS provided Servers.* LSS shall be responsible for acquisition; licensing and maintenance of any LSS-provided computing system or service. Any computer, servers or network hardware provided by LSS or any third-party must be pre-approved by the IS Director and adhere to City standards before being connected to City-owned computer hardware or the City's data network.

F. Telephony, Network, Internet, and Printers

(1) *City network connectivity (to facility and to staff).* The IS Department is responsible for the maintenance and operation of all City-provided network equipment, including the configuration, support and maintenance of all routers, switches, firewalls and associated Ethernet and fiber connectivity.

(2) *Wireless network connectivity.* The IS Department is responsible for the maintenance and operation of all City-provided wireless network equipment, including the configuration, support and maintenance of wireless access points and associated routers, firewalls and cabling.

(3) *City internet connectivity.* The IS Department is responsible for the maintenance and operation of City-provided internet connectivity, including: modems, routers, switches and associated cabling. As of the Effective Date, City provides internet connectivity for the use of library patrons and Library Staff computers.

(4) *Telephone system.* The IS Department is responsible for the maintenance and operation of all City provided voice communications equipment at the Library, including: VoIP/PBX equipment, handsets and associated cabling.

(5) *Printers and Copiers.* Library Staff is responsible for the support of all City provided printers and copiers which are designated for use by library patrons. The City shall be responsible for the paper, toner, maintenance and repair costs of all printers and copiers for use by library patrons.

Exhibit A to Schedule C

Software used in Library:

Software	**Operational Responsibility**	**Financial Responsibility**
Polaris	LSS	LSS
Cassie/Cassie Manager*	LSS	LSS
Winselect on Enterprise Server	LSS w/City IT support	City
Deep Freeze on EnterpriseServer	LSS w/City IT support	City
Magic Info/Digital Signage	LSS for content creation. City IT support for hardware or software	City
Web Filtering	LSS	City
Antivirus/Antimalware	City	City
MS Windows	LSS w/City IT support	City
MS Office	LSS w/City IT support	City

*or equivalent software

Schedule D

3 Bin Sorter

1.0 Equipment and Installation

1.1 LSS shall provide for the Library, subject to the terms and conditions contained herein, the Sorter hardware, software and fixtures. LSS shall, in concert with City, install the Equipment at the Library.

1.2 City will install at the Library at its expense the electrical wiring and connections and telecommunications cable required for the Equipment.

2.0 Schedule

The work to be completed by City and LSS hereunder shall be performed in accordance with the following schedule during calendar year 2017:

Task	Responsible Party	Date
Wiring and telecommunications	City	Completed by April 30
Equipment installation / Completion	LSS & Bin Vendor	Completed by July 30

3.0 Ownership

3.1 Unless and until title to the Equipment is transferred by LSS to City in accordance with this Section 3.0, LSS shall own the entire right, title and interest in and to the Equipment.

3.2 If City terminates this Agreement pursuant to Section 2(b) or LSS terminates this Agreement pursuant to Section 2(c), City shall have an option, exercisable by written notice to LSS no later than ten (10) days after the effective date of such termination, to purchase the Equipment for the residual value of the Equipment as of the effective date of such cessation in accordance with Exhibit B attached hereto. If City exercises such option, City shall pay LSS the applicable residual value as of the effective date of such cessation and LSS shall simultaneously assign to City the entire right, title and interest in and to the Equipment. If City does not exercise such option, LSS shall continue to own the Equipment and shall have the right to remove the Equipment from the Library.

3.3 If LSS terminates this Agreement pursuant to Section 2(b) or City terminates this Agreement pursuant to Section 2(c), LSS shall assign to City all right, title, and interest in the Equipment not later than ten(10) days after the effective date of such termination with no obligation of City to pay any further amounts toward the purchase of the Equipment

3.4 If City has not previously purchased the Equipment under Section 3.2 and LSS continues to provide services for the Library similar to those under this Agreement during the entire initial term of this Agreement ending December 31, 2021, LSS shall assign to City the entire right, title and interest in and to the Equipment.

Exhibit A to Schedule D

mk SOLUTIONS

Pricing Summary:

SOFTWARE	QTY.	LIBSOFT	LIBSOFT PLUS
(SelfChecks, Return/Sorting, LibDispenser)	Per month/station	$52.10	$57.30
Year 1 (total)	1	$625.20	$687.60
One Time Set Up Fee for LibSoft / LibSoft Plus (all stations)			$500.00

HARDWARE	
Hardware	$64,590.00

INITIAL PROJECT TOTAL		with LIBSOFT	with LIBSOFT PLUS
Year 1 Software & Hardware		**$65,715.20**	**$65,777.60**
Annual Maintenance Software			Included
Annual Maintenance Hardware			Please see options

Maintenance Programs:

Year 1 (Warranty)	Included
Year 2	$1,623.00
Year 3	$1,664.00
Year 4	$1,706.00
Year 5	$1,749.00

mk Sorting Systems

Efficiency with simple and secure sorting of material

Benefits

- mk Sorting's durable modular design allows for easy and economical system expansion.
- Every sorting station is custom designed and built to the library's requirements and specifications.

Features

- Sorting systems start at a minimum of three sort points that can be easily expanded with additional sort points in modules of two.
- Self diagnostic components ensure an uptime reliability according to automotive standards.
- Belt conveyors ensure the lowest noise levels.
- Single, specially designed soft conveyor belt provides safe and gentle conveying of all types of material.
- Handles the thinnest of materials including magazines, newspapers and DVDs.
- Completely secured and approved systems designed for the option for use in public areas without the need of additional glass or walls.
- Book bins, totes and/or stacking carts equipped with locking mechanism to protect items and equipment and ensure they remain locked in place.
- At a stacking cart sort point, either a stacking cart or a book bin can be docked if required.

Please Note:

- All systems conform to OSHA (Occupational Safety Health Administration) regulations.
- Lifetime warranty on parts and services available.
- All mk components and mk suppliers meet the ROSH regulations due to our Recycling Policy.
- Individualized drawings and layout suggestions available upon request.

Product Specifications

- Throughput Capacity: Up to 1,800 items / hour

Dimensions per sorting module of 2 sort points (one left, one right):

- With small bins 31.5" x 63.8" x 51.2" (L x W x H)
  800 x 1620 x 1300 mm
- With large bins 31.5" x 79.5" x 51.2" (L x W x H)
  800 x 2020 x 1300 mm

mk Staff Return (height adjustable)

Flexibility and efficiency for your staff

Benefits

- Height adjustable workstation.
- Customizable to meet library's specifications and requirements or match library décor
- Staff control panel monitors the system, displays status changes and contains self-diagnostic software in case of system failure.
- Soft conveyor belt for gentle material handling.
- Staff-friendly graphic interface.
- User commands viewable in multiple languages.
- Operational performance centrally managed by **mk LibManager** software (included).

Functional Description

- The process starts by placing the item on the conveyor belt.
- Upon successful acceptance and return by the ILS, the item is sent on to the appropriate sort destination.
- Unidentified items or incomplete sets are immediately rejected.
- Processed materials are listed on the display.
- If desired, a receipt of the returned books or a reserve slip can be provided to library staff via the integrated receipt printer.
- Bin levels and system status are easily observed by the staff.
- As items move down the belt, they are identified in the ILS, marked as returned, security is reactivated, and the item continues to the appropriate bin.
- If system errors occur the staff control panel shows the exact area of the incident on the system visualization screen.

Product Specifications

- 17“ monitor.
- Adjustable mounted monitor.
- Conveyor feeds directly into sorting system.

Available Options

- Hold slip printer
- Barcode scanning and/or Electromagnetic (EM) resensitizer ***

*****The equipment being proposed includes one or more industrial barcode scanners. Each scanner is designed to read barcodes that meet international standards for image density and line width. In the event that the quality falls below international standards, it may be necessary to provide an alternate scanning solution.To verify this, we require sample barcode labels from your library for compliance testing.*

mk Return Station RS5 & RS5T

Return with Ease and Convenience

RS5 *(without touch screen)*

RS5T *(with touch screen)*

Benefits

- The RFID enabled **mk RS5** is an affordable solution for accepting returns. Materials are immediately checked in and the security setting is re-activated as items are returned.
- Available 24/7.
- Red & green LED status lights illuminate the return opening and indicate when patrons should feed items.
- Items the library does not accept become rejected to the patron.
- Graffiti and weather resistant.
- Operational performance centrally managed by **mk LibManager** dashboard software.

Features

- Equipped to read 13.56 MHz RFID library tags.
- Attractive and durable brushed stainless steel faceplate.
- Mounting through interior or exterior walls.
- Items can be conveyed into optional book bins or into any size sorting systems.

Product Specifications

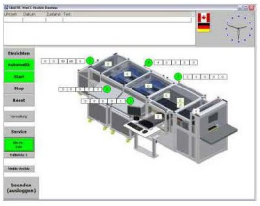
- Communication to ILS: via SIP-2 or NCIP
- Dimensions: W 24" x H 28" (W 600 mm x H 700 mm)
- Dimensions with touch screen monitor: W 24" x H 34" (W 600 mm x H 850 mm)

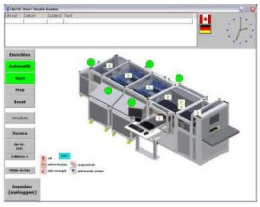
Available Options

- Receipt printer
- Touch screen monitor
- Restricted access to open return gate via scanner or reader

mk Sorting System

Control And Visualization At All Times Know What Runs – Through Intelligent Control





- The software communicates with the library system by means of the interface SIP-2 or future NCIP.
- Easiest application for your staff with central administration software.
- Easy-to-retrieve statistics. Any sorting criteria of the staff can be defined.
- Targeted rejection of books marked in and media, require special treatment.
- Special programs provide for night and weekend or holiday settings well to be able to settle the flexibility to also rest periods and to take full advantage of the system's capacity.
- Note sorted bins are clearly displayed on the visualization. Automatic error detection and visualization.
- Remote maintenance and diagnosis of possible secure VPN connection.
- The system monitors any status change and immediately displays.
- Offline function if the database is not available. Automatic synchronization as soon as it is available again. Logging if synchronization fails...

Exhibit B to Schedule D

City of Farmers Branch
3 Bin Sorter

Asset Cost & related expenditures: $72,519.60

Month	Amortization	Residual Value
1*	$1,208.66	$71,310.94
2	$1,208.66	$70,102.28
3	$1,208.66	$68,893.62
4	$1,208.66	$67,684.96
5	$1,208.66	$66,476.30
6	$1,208.66	$65,267.64
7	$1,208.66	$64,058.98
8	$1,208.66	$62,850.32
9	$1,208.66	$61,641.66
10	$1,208.66	$60,433.00
11	$1,208.66	$59,224.34
12	$1,208.66	$58,015.68
13	$1,208.66	$56,807.02
14	$1,208.66	$55,598.36
15	$1,208.66	$54,389.70
16	$1,208.66	$53,181.04
17	$1,208.66	$51,972.38
18	$1,208.66	$50,763.72
19	$1,208.66	$49,555.06
20	$1,208.66	$48,346.40
21	$1,208.66	$47,137.74
22	$1,208.66	$45,929.08
23	$1,208.66	$44,720.42
24	$1,208.66	$43,511.76
25	$1,208.66	$42,303.10
26	$1,208.66	$41,094.44
27	$1,208.66	$39,885.78
28	$1,208.66	$38,677.12
29	$1,208.66	$37,468.46
30	$1,208.66	$36,259.80
31	$1,208.66	$35,051.14
32	$1,208.66	$33,842.48
33	$1,208.66	$32,633.82
34	$1,208.66	$31,425.16

35	$1,208.66	$30,216.50
36	$1,208.66	$29,007.84
37	$1,208.66	$27,799.18
38	$1,208.66	$26,590.52
39	$1,208.66	$25,381.86
40	$1,208.66	$24,173.20
41	$1,208.66	$22,964.54
42	$1,208.66	$21,755.88
43	$1,208.66	$20,547.22
44	$1,208.66	$19,338.56
45	$1,208.66	$18,129.90
46	$1,208.66	$16,921.24
47	$1,208.66	$15,712.58
48	$1,208.66	$14,503.92
49	$1,208.66	$13,295.26
50	$1,208.66	$12,086.60
51	$1,208.66	$10,877.94
52	$1,208.66	$9,669.28
53	$1,208.66	$8,460.62
54	$1,208.66	$7,251.96
55	$1,208.66	$6,043.30
56	$1,208.66	$4,834.64
57	$1,208.66	$3,625.98
58	$1,208.66	$2,417.32
59	$1,208.66	$1,209.13
60	$1,208.66	$0.00

*First month = January 2017

FARMERS BRANCH

MANSKE LIBRARY

CONTRACT RENEWAL

City Council Meeting | November 15, 2016

Background

- In January 2011 the City outsourced the operation of the Manske Library to Library Systems & Services
- The agreement was renewed in 2013 for a 3 year term
- The 2013 agreement included, at LS&S cost, the purchase and installation of RFID tagging and Self Check-Out equipment
- In January 2015, Argosy Private Equity acquired ownership of LSS. From a City perspective, this has not affected service levels.
- The current agreement ends December 31, 2016
- Current agreement automatically renews for one year unless written notice of intent to not renew is given 90 days prior to the term of the contract, or a new agreement is negotiated

2015 Quick Stats

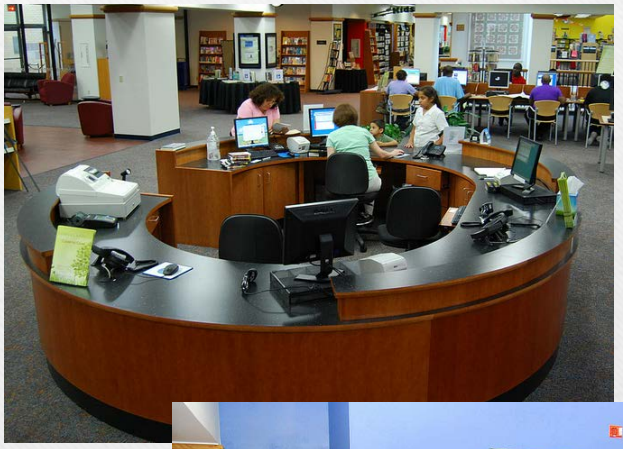
- 185,362 Annual Visits
- 34,663 Registered Card Holders
- 3,243 Annual Hours Open
- 299,961 Total Collection
- 343,952 Total Circulation
- 813 Total Library Programs
- 21,846 Total Program Attendance

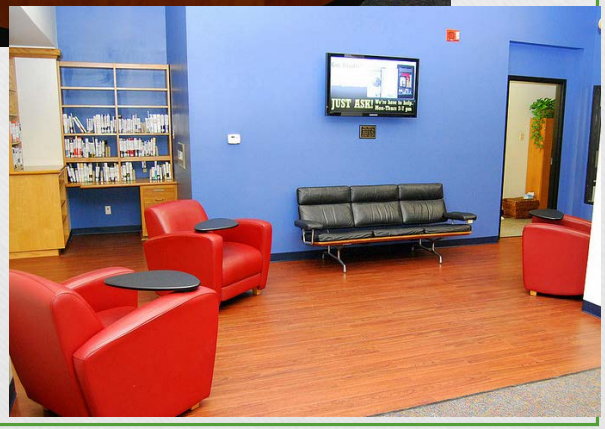
Accomplishments

OVER THE PAST 3 YEARS

Library Updates

- New circulation desk at a new location
- New furnishings in new sitting areas
- Security Cameras
- Auditorium AV Update
- New Shelving
- Bathrooms Remodeled
- Little Free Library provided outside library near the park Coming soon!

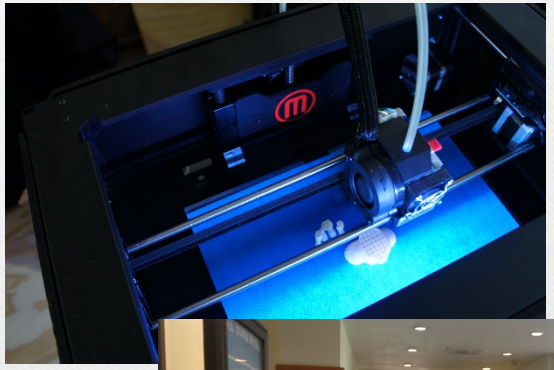




Accomplishments Continued

New Technology

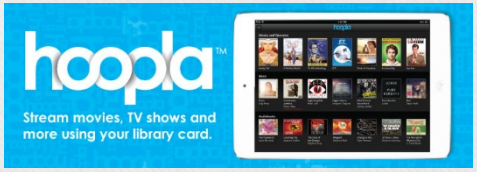
- RFID and Self-Check Out
- 3D Printer
- Drop Share Tables (Collaborative Tables utilizing a large screen to share up-to-4 laptop screens)
- IPAD Devices



Accomplishments Continued

New Resources Added to the Library

- Lynda.com
- Hoopla Downloadable Movies
- Overdrive and TumbleBooks (EBooks)
- One Click Digital (Audiobooks), Freegal (Movies), Zinio (EMagazines)



Accomplishments Continued

New Programming

- Additional Children's Programs:
  - STREAM (Science Technology Reading Engineering Arts Math) activities coincide with education
  - Homework help
  - More robust Summer Reading programs
  - Storytime for all ages
  - Crafts
- Improved Adult Programs:
  - Outside presenters (VA, Safety Tips, Texas History)
  - Downton Abby Trivia
  - Rose Bingo in conjunction with the City
  - Knit Wits knitting and crocheting
  - Holiday Recipe Swaps
  - Coloring for Adults

Citizen Satisfaction

How would you rate the Library for staff assistance/courtesy?

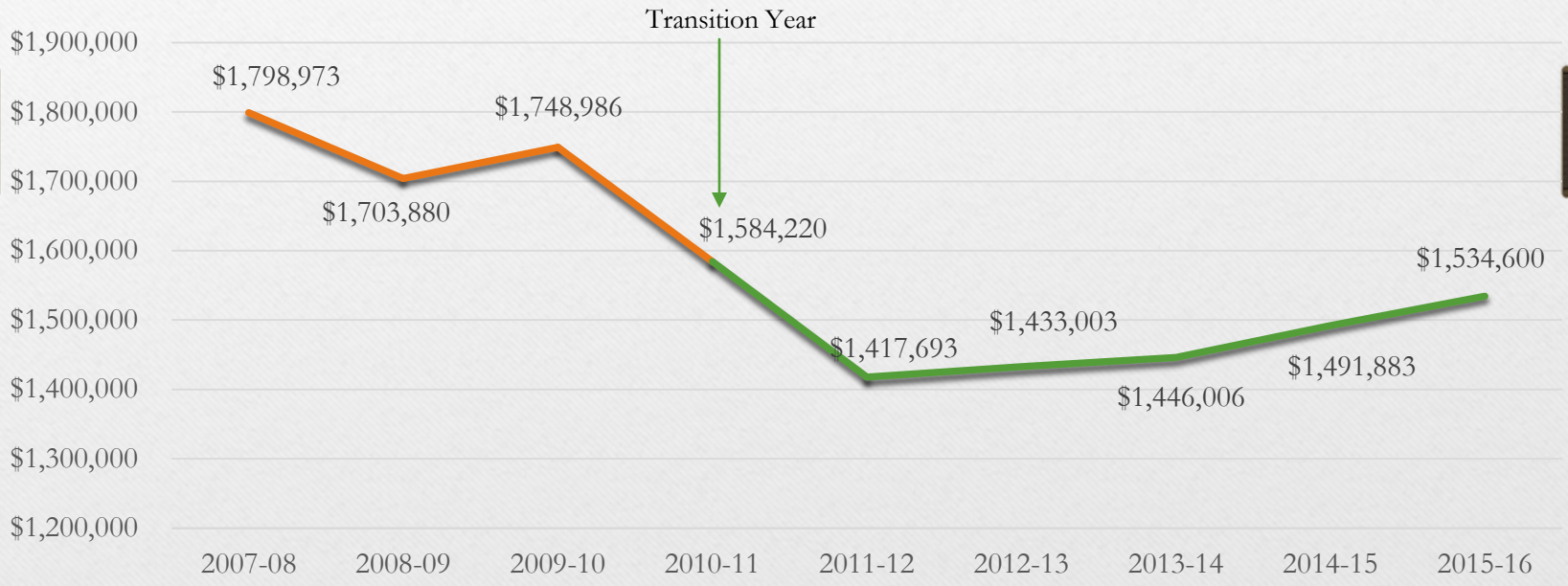
- **2014 survey 90% responded excellent or good**
- **2012 survey 91% responded excellent or good**
- **2010 survey 98% responded excellent or good**

How would you rate the Library for overall Library services?

- **2014 survey 91% responded excellent or good**
- **2012 survey 91% responded excellent or good**
- **2010 survey 97% responded excellent or good**

Note:
2010 survey was a telephone survey with 500 residents responses; 2012 survey was a mailed & web based survey with 1501 responses; 2014 survey was mailed & web based survey with 1050 responses

Library Expenditures 2007-2016



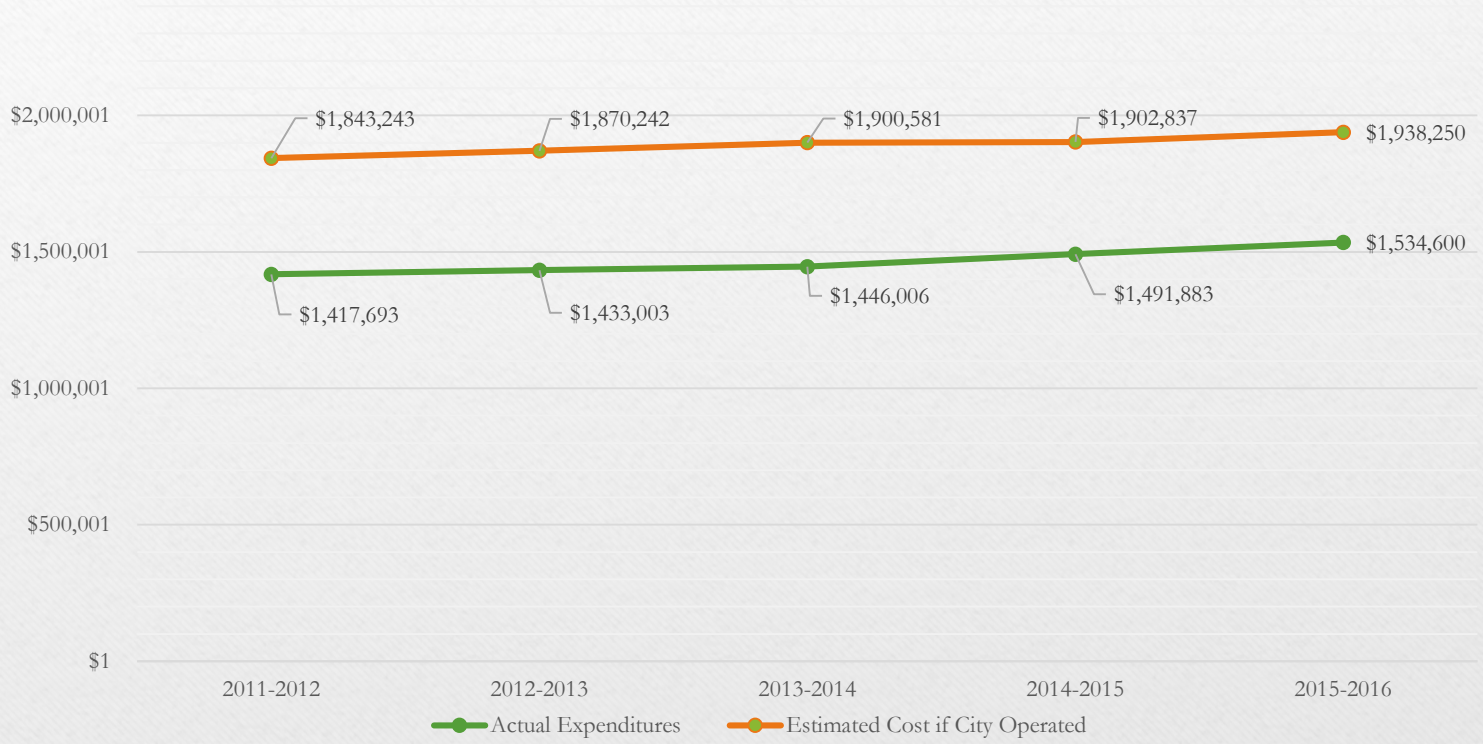
Estimated Savings

- 3 year average of Library expenditures prior to outsourcing FY07-08, FY 08-09 and FY 09-10: **$1,750,613**
- FY 2010-11 was excluded because it was the transition year and included payouts and was partially contract and partially City operated
- Average cost of City run library expenditures ($1,750,613) plus a CPI adjustment for each year since the contract shows the following estimated savings:

	1st Agreement		2nd & Current Agreement		
	2011-12	**2012-13**	**2013-14**	**2014-15**	**2015-16**
$1,750,613 Plus CPI Adjustment	$1,843,243 (2.07%)	$1,870,242 (1.46%)	$1,900,581 (1.62%)	$1,902,837 (0.12%)	$1,938,250 (1.86%)
Actual Expenditures	$1,417,693	$1,433,003	$1,446,006	$1,491,883	$1,534,600
Savings	$425,550	$437,239	$454,575	$410,954	$403,650
TOTAL SAVINGS	**$2,131,968 over 5 years with CPI Adjustment** **$1,429,880 over 5 years without CPI adjustment**				

Note: Facility maintenance costs have been removed from the above numbers to provide a more accurate comparison. From 2013 forward, all facility maintenance costs were added directly to department budgets.

Library Expenditures
City Run Library Estimates vs Outsourced Operation Actuals



*City Operated Expenditures calculated using 3 year average of Library expenditures prior to outsourcing ($1,750,613) plus a CPI adjustment for each year following.

Proposed Agreement

The proposed agreement is very similar to the previous agreement the following include the major changes:

- 5 year Agreement
- 2.5% increase from previous year equal to $30,233.33
- $1,239,566.33 annual cost
  - The price is negotiated on a yearly basis, or may renew at the same amount as the previous year, plus an additional amount equal to the percentage increase in the ECI but not to exceed 5%.
- Includes the addition of a staff training day coinciding with Presidents Day
- Includes addition of automated check-in equipment at no cost to the City - $72,519 value

Questions?

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-116

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.2

Consider approving Resolution No. 2016-116 for approval of a Detailed Site Plan for a 35.7 acre tract located west of Mercer Crossing Lake and south of Wittington Place; and take appropriate action.

BACKGROUND:

Earlier this year the City approved Planned Development No. 99. This zoning district established a new master planned community containing 267 acres extending from Mercer Crossing Lake to the levee west of Mercer Parkway. Within this new community the developer, Centurion American, proposes to create six (6) new single family residential neighborhoods. This proposed Detailed Site Plan is the first of these new residential neighborhoods. This neighborhood, to be known as “Brighton”, contains 35. 7 acres and proposes to create 91 single family lots. The common amenity center for all the Mercer Crossing neighborhoods is included with this site plan.

RECOMMENDATION:

The Planning & Zoning Commission finds that this proposed Detailed Site Plan is in compliance with the Conceptual Site Plan and development standards included and outlined in Planned Development No. 99 (PD-99) as described in Ordinance No. 3359.

At their November 14th Regular Meeting, the Planning & Zoning Commission voted to recommend approval of this Detailed Site Plan as described in Resolution No. 2016-116.

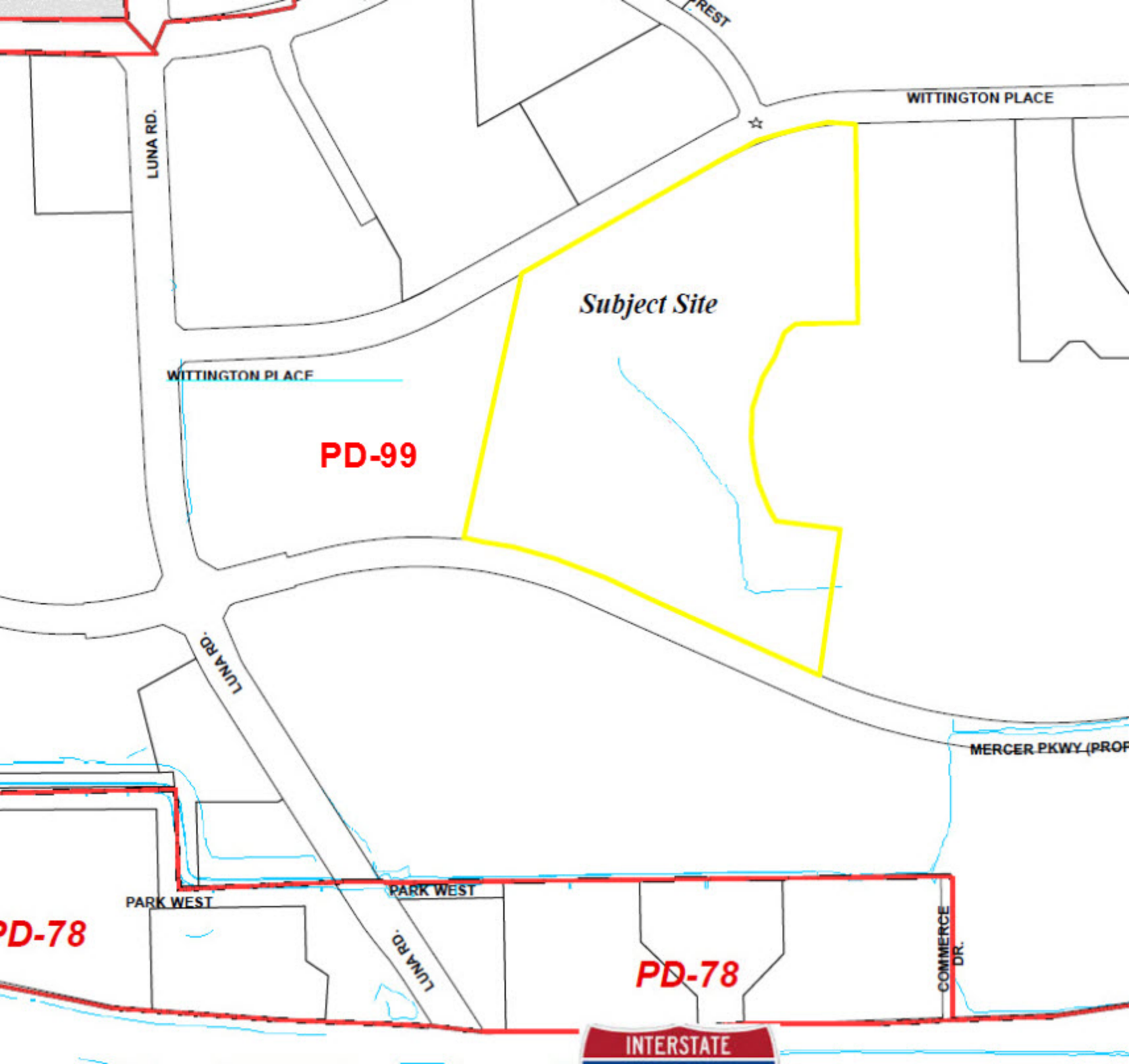
ACTIONS:

1. Motion to adopt Resolution No. 2016-116 as presented at this meeting.
2. Motion to adopt Resolution No. 2016-116 with the following modification(s).
3. Motion to continue discussion of this case to the next regular meeting.

ATTACHMENTS:

1. Location Map
2. Aerial Map
3. Information Memorandum
4. PD-99 Conceptual Site Plan
5. Overall Mercer Crossing Plan
6. Neighborhood Map for Mercer Crossing
7. Resolution No. 2016-116
8. Mercer Crossing Pattern Book

9. Wall Details
10. House Plan Examples


WITTINGTON PLACE
LUNA RD.
Subject Site
WITTINGTON PLACE
PD-99
LUNA RD.
MERCER PKWY (PROP
PARK WEST
PARK WEST
PD-78
LUNA RD.
PD-78
COMMERCE DR.
INTERSTATE

House Plan Examples

The above image sets an ideal standard for the Texas Tudor Design theme. The chimney detail, brick patterns, and color palette are all strong architectural elements.

In this image the half timbering and multi-paned windows are the highlighted Texas Tudor elements to replicate.

The brick detailing and standing seam accents make this a great rear entry example.

The image above is an excellent variation of the top left elevation. By varying colors of materials the same look can easily be accomplished.

There are very few front entry lots in Mercer Crossing, but this is a prime example to be used. The brick details, half timbering inlay reinforce the Texas Tudor style.

This is another great front entry elevation. The intricate detail on the chimney and the use of native materials are the very definition of Texas Tudor.

The multiple Texas Tudor elements include: eyebrow windows, cedar shutters, herringbone brick details, and native building materials.

The above townhome elevation includes Standing seam accents, multi-paned windows, half timbering, and an acceptable color palette.

Parcel Property Boundaries

City Limit

16-SP-12 - Aerial Map
Brighton at Mercer Crossing

FARMERS BRANCH

Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data. For pictorial reference only.

0 462.5 925 Feet

NORTH

Document Path: Z:\Zoning Cases\2016 cases\16-SP-12 Mercer Crossing Brighton\GIS\Aerial Map.mxd

Date: 10/14/2016

Information MEMORANDUM

TO: Mayor and City Council

FROM: Charles S. Cox
City Manager

DATE: 12-05-2016

SUBJECT: Resolution No. 2016-116 approving a Detailed Site Plan for a single family detached neighborhood in PD-99

Summary

***Site design**:* *A 35.7 acre Single family detached residential community*

Units: *91 buildable lots, ranging from 50'x130' to 60'x105'*

Existing Conditions

In March of this year, the City approved Planned Development No. 99 (PD-99). This PD established a new master planned community containing residential, retail and entertainment land uses. This new master planned community contains approximately 267 acres and extends westward from Mercer Crossing Lake to the Valwood Improvement levee system west of Mercer Parkway. A Conceptual Site Plan was included within this new PD. This Conceptual Site Plan outlined the general land use areas and street network to be used for new community. Within this Conceptual Plan six single family neighborhoods were established. This Detailed Site Plan request represents one of those six single family neighborhoods. (See Neighborhood Map)

The site is located west of Mercer Crossing Lake and immediately south of Wittington Place. (See Aerial Map)

For this 35.7 acre property, the applicant, CADG Mercer Crossing Holdings LLC (a subsidiary of Centurion American) has proposed to develop a single family detached residential community containing approximately 91 buildable lots. This development is proposed to be constructed in one phase.

The site is bordered to the west by another 16 acre future single family detached neighborhood (to be known as Ashington). To the south of this site is proposed Mercer Parkway and a 26 acre tract entitled for medium density multi-family development. To the east is the future street, Chartwell Crest, and the Mercer Crossing Lake. To the north of the site is Wittington Place and several existing office towers. (See Location Map).

Site Design

This Detailed Site Plan is for a proposed single family neighborhood to be known as "Brighton". Brighton is the easternmost residential community being developed by the applicant, Centurion American (CADG). Brighton will contain 35.7 acre total acres. It will be composed of 91 single family residential lots. Fourteen (14) of these lots will be front loaded (garages facing the street) and back up to the long linear park to the west. These are the only front loaded lots proposed within the Mercer Crossing community, and will be at least 50' wide and 130' in depth. The remaining 77 lots are rear loaded (driveways and garages facing the alleyway). These rear loaded lots range in width from 84' to 60'. The depth of these lots range from 179' to 105'. All lots within the Brighton neighborhood meet or exceed 6,300 square feet in total area.

The Brighton neighborhood is designed to take full advantage of the newly expanded Mercer Crossing Lake to the east. Chartwell Crest will serve as the main north/south street through the community. The only entry points into the Brighton neighborhood will be along Chartwell Crest. The northern entry will be at Wittington Place, and the southern entry at future Mercer Parkway. This extension of Chartwell Crest will be a 2 lane street with new homes on the western side and a linear park system along the eastern side. This eastern linear park will include both landscaped open space and a lakeside trail connection.

Mercer Crossing Amenity Center

East of Chartwell Crest will also contain the proposed Mercer Crossing Amenity Center for all six (6) proposed single family neighborhoods. This center will be developed on a 4.2 acre lot overlooking the lake. The main building will consist of approximately 6,000 square feet and include a large community room, fitness center and kitchen area. A community pool (approximately 4,500sf), large outdoor entertainment patio, fire pit area, are included amenities located between the building and the lake.

A new 12' wide concrete trail will also extend along the eastern edge of Chartwell Crest. This trail will connect to the large trail loop that will eventually loop around Mercer Crossing Lake.

In the center of the proposed Brighton neighborhood is another park consisting of approximately 3.8 acres and a new water feature (small pond). Also within this new park will be a new playground and 6' wide concrete walking paths.

Mercer Crossing Design Guidelines (Pattern Book)

As part of the overall design of the Mercer Crossing mixed use development, CADG has developed a comprehensive set of Design Guidelines outlining the basic theme and character of the new community. This guideline document, or Pattern Book, includes design advice regarding such items as, building architectural style (commercial and residential), street design, open space and parks design, trails, streetscape improvements, sign typology and standards, and wall materials and treatments. (see Mercer Crossing Pattern Book)

The proposed architectural theme of the Mercer Crossing community is “Texas Tutor”. This unique style is combination of key English Tudor building elements (such as field stone, large wooden timbers, and steep multi-gabled roof lines), with contemporary Texas style elements like brick and stone exteriors, metal roofs, large porches and oversized windows. Texas Tudor weaves these two vernacular styles into unified look for both the residential and commercial subdistricts within Mercer Crossing. This comprehensive Pattern Book gives all potential builders and property owners guidance on how to integrate their specific project into the Mercer Crossing community

House Designs and Elevations

As mentioned earlier, all lots within the Brighton neighborhood are at least 6,300 square feet in area. After the required setbacks, the buildable area will exceed 3,800 square feet. Two homebuilders, First Texas Builders and Oakdale Homes, plan to buy all the lots within Brighton. Both builders are aware of the architectural design requirements within Mercer Crossing. Although the use of common Texas Tudor materials and architectural elements is encouraged, the Mercer Crossing design guidelines demand a variety of house designs be assembled throughout the neighbor. For example, no house plan and exterior can be repeated within 4 lots of the original design.

Both builders are proposing to build homes containing at least 2,500 square feet of living space. Most of the proposed house plans are 2 story in height (40’ maximum), and contain more than 3,200 square feet. The estimated cost of these homes will range from $400,000 to $800,000. (See House Plan Examples)

Parking

All lots within Brighton will require at least a 2 car garage. In addition, the design of the driveway will include at least 2 more on site surface parking spaces. Most of the lots (77), have rear loaded driveways. In addition, on street parking will be allowed on most local streets within Mercer Crossing to help accommodate visitor parking needs. Only 14 lots are designed to allow front loaded driveways. These lots are located in the westernmost portion of the Brighton neighborhood, and back up to another linear park to the west. These 14 front loaded lots are deeper than the rear loaded lots (typically 135’ in depth).

Parking for the Mercer Crossing Amenity Center is provided within the 4.2 acre site, as well as on-street parking along Chartwell Crest.

Parks, Open Space and Trails

There are three designated parks or landscaped open spaces within the Brighton neighborhood, containing over 11 acres (approximately 31% of the total area). Two of these spaces are located on the east side of Chartwell Crest, adjacent to Mercer Crossing Lake. The southernmost of these two parcels includes the Amenity Center. A 12' wide concrete trail winds its way through both of these landscaped open spaces from Wittington Place to future Mercer Parkway. Along this new trail will be streetscape improvements such as benches, streetlights, exercise stations, drinking fountains, and dog stations. New canopy trees will also be installed to provide shade and color along the trail.

The third parcel is a more traditional park located on the west side of Chartwell Crest directly facing the neighborhood homes. This 3.8 acre park will include a small pond and a playground, as well as a 6' wide concrete walking path around the perimeter. In addition, there are several small remnant parcels within Brighton which will serve as small landscaped pocket park areas or trail connections. (See Landscape Plan).

A high priority has been placed on pedestrian connectivity throughout the proposed new Mercer Crossing community. A comprehensive trail network system has been integrated into each of the proposed residential neighborhoods, tying them all together. The Brighton neighborhood has a 12' trail proposed along the eastside of Chartwell Crest along Mercer Crossing Lake. Another 12' wide trail will extend along the northern side of Mercer Parkway. An 8' wide trail will extend along the southern side of Wittington Place. Another 8' trail located in the center of Brighton will connect the neighborhood with another linear park located to the west. All local streets will have 5' wide sidewalks.

All parks, landscaped open space and trails will be maintained by the Mercer Crossing Homeowners Association (HOA).

Signage

CADG has developed a comprehensive signage typology for all of the Mercer Crossing community, both commercial and residential. Within Brighton, on the southeast corner of the Chartwell Crest and Wittington Place intersection an overall Mercer Crossing community sign and entry tower are proposed. O the southwest corner of this intersection a proposed Brighton neighborhood sign is to be included into the community wall. Another such Brighton sign is proposed on the northwest corner of the Chartwell Crest and Mercer Crossing intersection. (See Signage Details in Landscape Plan and Pattern Book)

Walls

To help buffer the residential neighborhoods throughout the Mercer Crossing community, a special network of masonry walls has been designed. These masonry walls will follow the old

English Tudor style, and be composed of both stone and brick. Special accent portions of the wall located at points of high visibility will be composed of stone, while other wall sections will be composed of a brick "thinwall" design (no precast concrete panels). A concrete foundation (designed by a structural engineer) will be poured for the base of all masonry wall sections. All masonry walls will be at least 6' in height. (See Wall Sections in Landscape Plan).

All maintenance of the masonry walls and neighborhood signage will be responsibility of the Mercer Crossing Homeowners Association (HOA).

Streets

As mentioned earlier, Chartwell Crest will be extended southward and serve as the primary local street connection to the Brighton neighborhood. Four (4) additional local streets are proposed within the Brighton neighborhood: Prescott Place, Hanover Court, Brighton Place, and Bramshaw Trail. All local streets are designed to be 31' in width, and allow on street parking in most areas. A series of three (3) alleys will also serve the neighborhood. These alleys will be 12' wide paved concrete.

All new street pavement (from curb to curb) will be maintained by the City upon acceptance of the street. All sidewalks and alleys will be maintained by the Mercer Crossing HOA. All street trees, landscaping, and street hardscape will be maintained by the Mercer Crossing HOA.

Conclusion

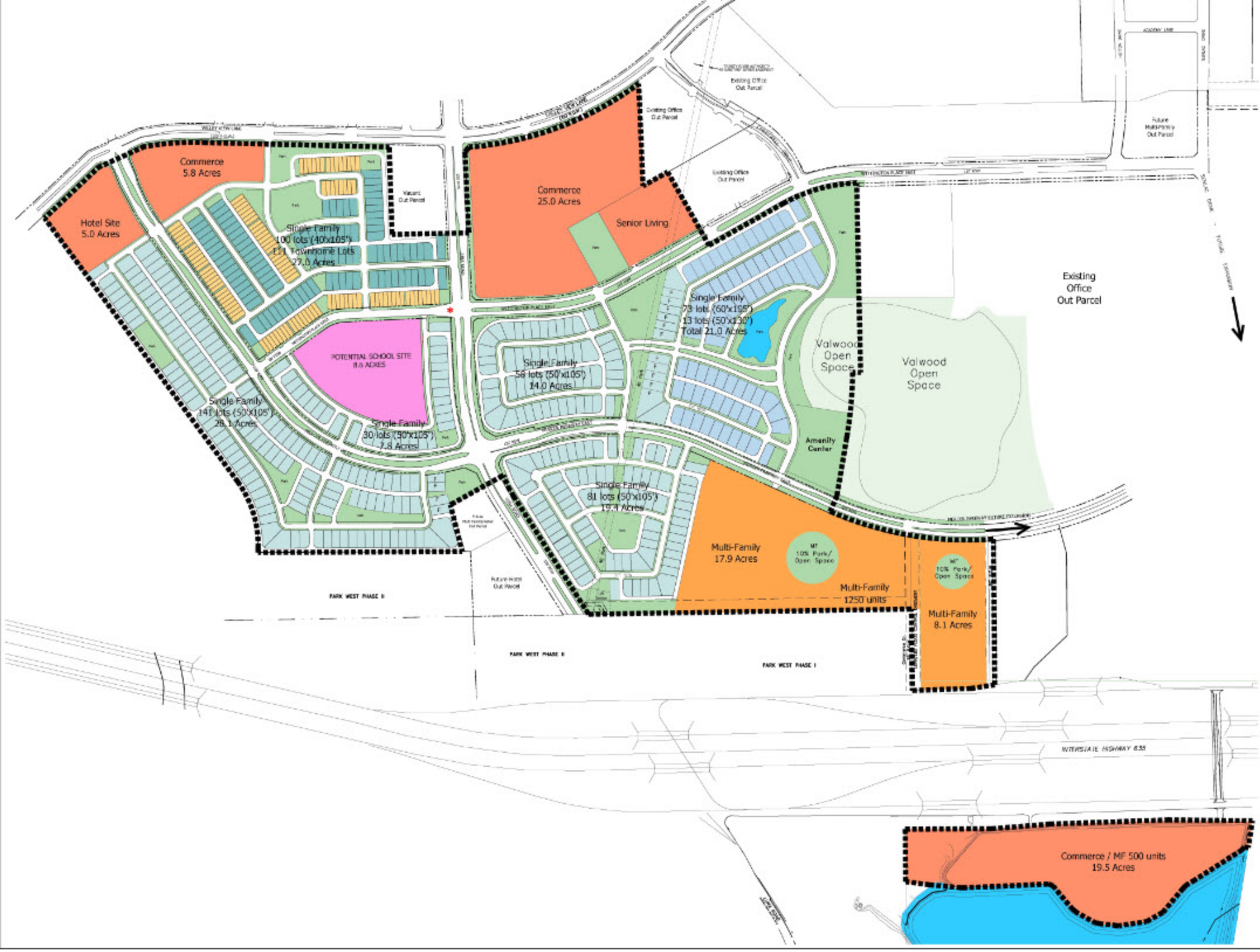
The Brighton neighborhood proposed with this Detailed Site Plan is consistent with Planned Development No. 99 (PD-99) and the associated Conceptual Site Plan described in Ordinance No. 3359.

Recommendation

On November 14, 2016 the Planning & Zoning Commission voted to recommend approval of the detailed Site Plan for the Brighton neighborhood as described in Resolution No. 2016-116.

<u>Possible Council Action:</u>

1. I move to adopt Resolution No. 2016-116
2. I move to adopt Resolution No. 2016-116 with the following modification(s)…
3. I move to table the item or take no action.



Legend

Single Family 60'x105' lots	73 lots
Single Family 50'x130' lots	13 lots
Single Family 50'x105' lots	310 lots
Single Family 40'x105' lots	100 lots
Townhomes 25'x90' lots	111 lots
Multi-Family (Includes O.S.)	26.0 Acres
Commerce/ Hotel/Sr. Living	55.3 Acres
Potential School Site	8.6 Acres
Park / Linear Park Amenity Center/ Valwood OS (inside)	26.4 Acres
Valwood Open Space (Outside)	31.2 Acres
Water Area	
Zoning Boundary	

F Front-Load Lot

* Final alignment of Wittington and Luna intersection to be addressed during street design.

NOTICE:
Acreages, land uses, lot yields, road alignments, park/open spaces and trails are illustrative in nature and may change due to final surveys, field conditions and environmental findings, utilities, final site plans, and City of Farmers Branch and other governmental agency reviews and approvals. Ion Design Group, LLC is not responsible for loss of lots and land use changes due to these conditions. Owner reserves right to modify land-use allocations and densities by ±10%.

0 200 400

Mercer Crossing Layout

CITY OF FARMERS BRANCH DALLAS COUNTY TEXAS

Ion Design Group

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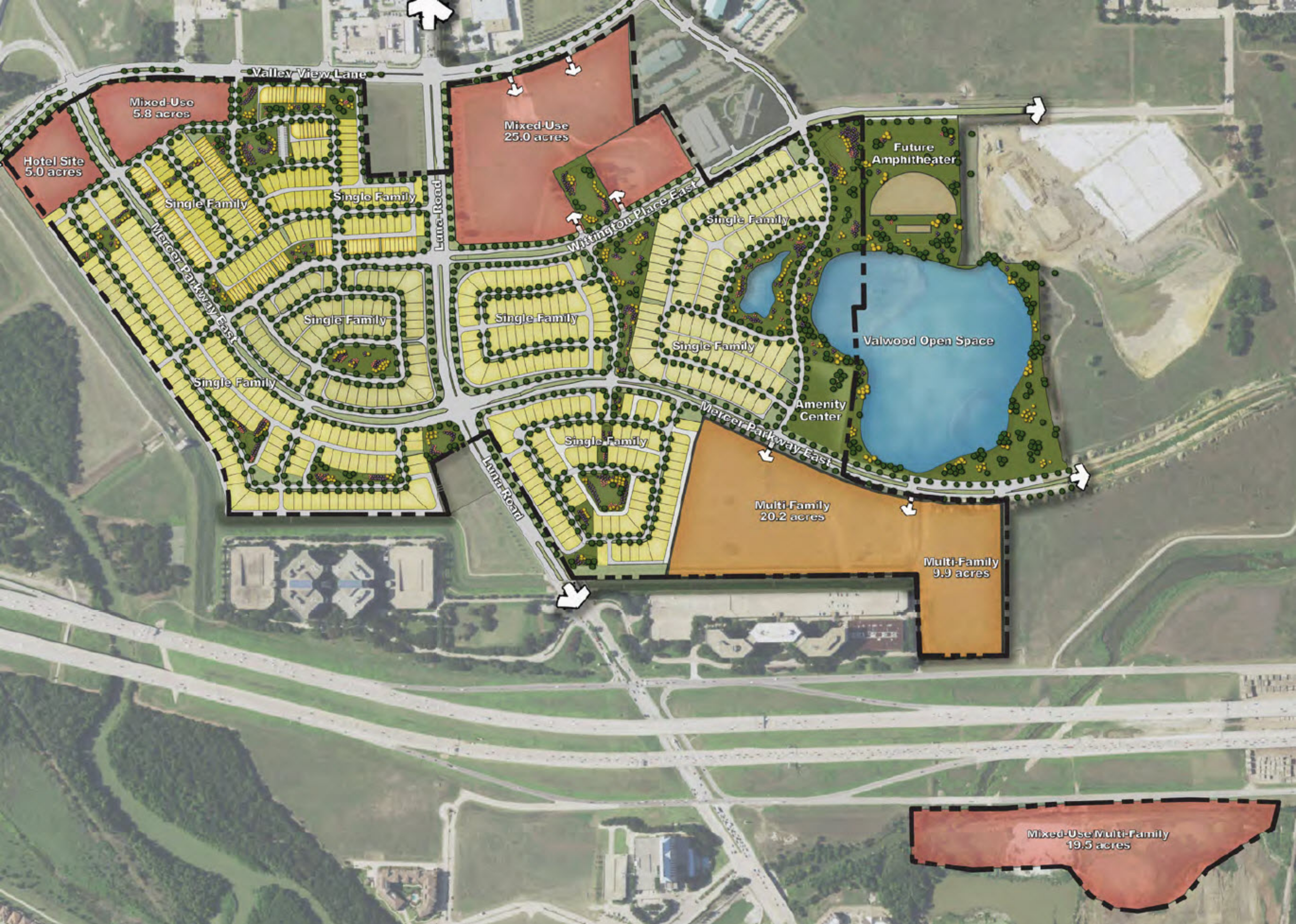
Valley View Lane
Mixed-Use
5.8 acres
Hotel Site
5.0 acres
Mixed-Use
25.0 acres
Future
Amphitheater
Single Family
Single Family
Luna Road
Mercer Parkway East
Wittington Place East
Single Family
Single Family
Single Family
Single Family
Single Family
Valwood Open Space
Single Family
Amenity
Center
Mercer Parkway East
Single Family
Luna Road
Multi-Family
20.2 acres
Multi-Family
9.9 acres
Mixed-Use Multi-Family
19.5 acres

WINDERMERE
VERWOOD
ASHINGTON
BRIGHTON
AMESBURY
COVENTRY

RESOLUTION NO. 2016-116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, APPROVING A DETAILED SITE PLAN AND RELATED DETAILED REGULATIONS FOR DEVELOPMENT OF A 35.715± ACRE TRACT OUT OF BLOCK D, WESTSIDE ADDITION SECTION 1, CITY OF FARMERS BRANCH, TEXAS DESCRIBED IN EXHIBIT "A" HERETO, LOCATED IN PLANNED DEVELOPMENT NO. 99 (PD-99); AND PROVIDING AN EFFECTIVE DATE

WHEREAS, an application has been made for approval of detailed site plan for a 35.715± acre tract out of Block D, Westside Addition Section 1, City of Farmers Branch, Texas, described in Exhibit "A" attached hereto and incorporated herein by reference ("the Property"), which is located in Planned Development No. 99 (PD-99); ~åÇ

WHEREAS, Ü~î áåÖ=êÉÅÉáî ÉÇ=ÍÜÉ=êÉÅçã ã ÉåÇ~íáçå=çÑ=ÍÜÉ=mä~åáåÖ=åÇ=wçåáåÖ` çã ã áëëáçå=íÜ~í= íÜÉ=ÇÉí~áäÉÇ=ëáíÉ=é ä~å=åÇ=ëëçÅá~íÉÇ=Çê~ï áåÖëI=áåÅäì Çáå ÖI=Äì í=åçí=äáã áíÉÇ=íçI=ä~åÇëÅ~é É=é ä~åI ~åÇ= Äì áäÇáå Ö=êäÉî ~íáçåëI=ëÜçì äÇ=ÄÉ=~é éêçî ÉÇ=~ë=êÉè ì ÉëíÉÇI=íÜÉ=` áíó=` çì åÅäã=çÑ=ÍÜÉ=` áíó=çÑ=c ~êã ÉëëI= _ê~åÄÜ=åã=ÍÜÉ=fnÉêÅáëÉ=çÑ=ÍÜÉ=ãÉÖáëä~íî É=Çëë Å~ëÉíáçåI=Ü~ë=Åçåëáî ÇÉÇ=íÜ~í=ÍÜÉ=êÉè ì ÉëíÉÇ=ëáíÉ=é ä~å=Ñçê= íÜÉ=mêçéÉëíó=ëÜçì äÇ=ÄÉ=é éêçî ÉÇX

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1.=qÜÉ=mêçéÉëíó=ëÜ~äã=ÄÉ=ÇÉî Éäçé ÉÇ=áå=~ÅÅçêÇ~åÅÉ=ï áíÜ=ÍÜÉ=êÉÖÜ ä~íáçåë=é éäÅ~ÄäÉ=íç= íÜÉ=mêçéÉëíó=ë=ëÉí=Ñçê=ëÜ~áã=ÄÉ=ÇÉî Éäçé ÉÇ=áå=~ÅÅçêÇ~åÅÉ=k çKPPRV=E?íÜÉ=ma JVV=I êÇáå~åÅÉ?F=~ë=ï Éäã=ë=ÍÜÉ=Ñçääçï áåÖ= êÉÖÜ ä~íáçåëW

A. **Detailed Site Plan**W=qÜÉ mêçéÉëíó=ëÜ~äã=ÄÉ=ÇÉî Éäçé ÉÇ=ëì Äëí~åíá~äóó=~ë=ëÉí=Ñçê=ëÜ~áã=ÍÜÉ= a Éí~áäÉÇ=pláÉ=mä~å=~íí~ÅÜÉÇ=ÜÉêÉçí=~ë bñÜáÄáí=?_ ? ~åÇ=áå Åçêéçê=íÉÇ=ÜÉêÉáå=Äó=êÉÑÉêÉåÅÉ= E?íÜÉ=pláÉ=mä~å?FXéêçî áÇÉÇI=ã áåçê=ÅÜ~åÖÉë=áå=äçÅ~íáçå çÑëíêÉÉíë=~åÇ=äáÉóë=ã ~ó=ÄÉ=ã ~ÇÉ= ï áíÜçì í=ÑìÉëíÜÉê=~ã ÉåÇã Éåí=íç=ÍÜÉ=pláÉ=mä~å=~ë=äçåÖ=~ë=ÍÜÉ=ÖÉåÉê~ä=é ~ííÉêå=çÑ=íê~ÑÑáÅ= ÅáêÅìä~íáçå=åÇ=~ÅÅÉëë=áë=ëì Äëí~åíá~äóó=ã ~åí~åÉÇK

B. **Landscape**W=

(1) qÜÉ=Åçã ã çå=~êÉ~ëI=çéÉå=ëé~ÅÉëI=ëíêÉÉí=ã ÉÇá~åëI=~åÇ=ÇÉÇáÅ~íÉÇ=ä~åÇëÅ~éÉ= É~ëÉã Éåíë=ÉãÑ=åóF=ÇÉî Éäçé ÉÇ=çå=ÍÜÉ=mêçéÉëíó=ëÜ~äã=ÄÉ=ä~åÇëÅ~éÉÇ=ëì Äëí~åíá~äóó=åå= ~ÅÅçêÇ~åÅÉ=ï áíÜ=ÍÜÉ=ï ~åÇëÅ~éÉ~ mä~å=ëÉí=Ñçê=ëÜ~áã=b ñÜáÄáí=?` I?=~íí~ÅÜÉÇ=ÜÉêÉíç=åÇ= áåÅçêéçê=íÉÇ=ÜÉêÉáå=Äó=êÉÑÉêÉåÅÉ=E?íÜÉ=ï ~åÇëÅ~éÉ=mä~å?FK=^ äãëÉë ì áÉÇ=ä~åÇëÅ~éåÖ= íç=ÄÉ=é ä~åíÉÇ=ï áíÜáå=Åçã ã çå=~êÉ~ëI=çéÉå=ëé~ÅÉëI=ëíêÉÉí=ã ÉÇá~åëI=~åÇ ÇÉÇáÅ~íÉÇ= ä~åÇëÅ~éÉ=É~ëÉã Éåíë=ë=ëÜçï å=çå=ÍÜÉ=ï ~åÇëÅ~éÉ=mä~å=ã ì ëí=ÄÉ=Åçã éäÉíÉÇ=é êáçê=íç= áëëì ~åÄÉ=çÑ=~=ÄÉêíáÑáÅ~íÉ=çÑçÅÅì é~åÄó=Ñçê=~åó=Äì áäÇáåÖ=Åçåëíëì ÅíÉÇ=ï áíÜáå=ÍÜÉ= mêçéÉëíóXéêçî áÇÉÇI=Üçï Éí Éêë=ã çÇÉä=Üçã Éë=ì ëÉÇ=ëçäÉäó=Ñçê=ë~äÉë=çÑÑáÅÉ=é ì êéçëÉë= ã ~ó=ÄÉ=Åçåëíëì ÅíÉÇK

(2) fåÇãî áÇì ~äêÉëáÇÉåíá-ääçíë-ëÜ-ää=ÄÉ=ä-åÇëÅ-éÉÇ=ëì Äëí~åíá-ääó=åå=~ÅÅçêÇ~åÅÉ=ï áíÜ=ÜÉ= éêçî áëáçåë-êÉä-íÉÇ=íç=ä-åÇëÅ-éåÖ=åå=íÜÉ=m-ííÉêå= ççâ=E-ë-ÇÉÑåÉÇ=åå=pÉÅíáçå=NK I= ÄÉäçï IK=fåëí~ää-íáçå-çÑ=ää=êÉè ì áëÉÇ=ä-åÇëÅ-éåÖ=Ñêçê=åÇãî áÇì ~äêÉëáÇÉåíá-ääçíë-ëÜ-ää= ÄÉ=Åçã éäÉíÉÇ=ÄÉÑçêÉ=íÜÉ=áëëì ~åÅÉ=Äó=íÜÉ=` áíó=çÑ~=` ÉêíáÑåÅ-íÉ=çÑ=I ÅÅì é~åÅó=çê= ` ÉêíáÑåÅ-íÉ=çÑ= çã éäÉíáçå=Ñçê=íÜÉ=Çï Éäääå Ö=ì åáí=Åçåëíêì ÅíÉÇ=çå=ë-áÇ

C. **Building Design, Elevations, and Diversity** W^ ää=Ä ì áäÇåÖë=Åçåëíêì ÅíÉÇ=çå=íÜÉ=mêçéÉêíó= ëÜ-ää=ÄÉ=ÇÉëáÖåÉÇ=åÇ=Åçåëíêì ÅíÉÇ=åå=ëì Äëí~åíá-äÅçåÑçêã áíó=ï áíÜ=íÜÉ=-êÄÜáÉÅì ê-äëíóäÉë= ~åÇ=ã ~íÉêá-äë-ëÉí=Ñçêí Ü-åå=íÜÉ=m-ííÉêå= ççâ K^ í=äÉ~ëí=íÜÉÉÉ=äçíë=ã ì ëí=ëÉé~ê-íÉ=Çï Éäääå Ö=ì åáíë= Åçåëíêì ÅíÉÇ=ï áíÜ=íÜÉ=ë-ã É=Ñççåí=Ä ì äÇåÖ=ÉäÉî ~íáçåI=ï ÜåÅÜ=ëÉé~ê-íáçå=ëÜ-ää=-éêäó=íç=ÄçíÜ= íÜÉ=ë-ã É=ëáÇÉçÑ=íÜÉ=ëíêêÉÉí=åÇ=-ÅêçëëíÜÉ=ëíêêÉÉíK=

D. **Entry Signs** W=båíêó=ëáÖåë=~åÇ=êÉä-íÉÇ=ä-åÇëÅ-éÉÇ=~åÇ=ëíêì Åì ê-ä=ÑÉ-íì êÉë=ëÜ-ää=ÄÉ= Åçåëíêì ÅíÉÇ=í=íÜÉ=äçÅ-íáçåë=ëÜçï å=çå=íÜÉ=páíÉ=mä-å=åÇ=ÇÉëáÖåÉÇ=åÇ=Åçåëíêì ÅíÉÇ=ë=ëÜçï å= çå=íÜÉ=båíêó=páÖåë=mä-å=íí~ÅÜÉÇ=ÜÉêÉíç=ë=bñÜäÄáí=?a ?=åÇ=áåÅçêéçê-íÉÇ=ÜÉêÉáå=Äó=êÉÑêÉå ÅÉK

EK **Street Design** Wpíêéëíë=Åçåëíêì ÅíÉÇ=ï áíÜåå=íÜÉ=mêçéÉêíó=ëÜ-ää=ÄÉ=ÇÉëáÖåÉÇI=Åçåëíêì ÅíÉÇI=åÇ= ä-åÇëÅ-éÉÇ=ëì Äëí~åíá-ääó=åå=~ÅÅçêÇ~åÅÉ=ï áíÜ=íÜÉ=píêÉÉí=` êçëë=pÉÅíáçåë=íí~ÅÜÉÇ=ÜÉêÉíç=ë= bñÜäÄáí=?b ?=åÇ=áåÅçêéçê-íÉÇ=ÜÉêÉáå=Äó=êÉÑêÉå ÅÉK

F. **Amenity Center** W^ å=ã Éåáíó=ÅÉåíÉê=ÇÉî ÉäçéÉÇ=åå=ëëçÅá-íáçåë=ï áíÜ=íÜÉ=ÇÉî Éäçéã Éåí=çÑ= íÜÉ=mêçéÉêíó=ëÜ-ää=ÄÉ=ÖÉåÉê~ääó=äçÅ-íÉÇ=ë=ëÜçï å=çå=íÜÉ=páíÉ=mä-å=åÇ=bñÜäÄáí=?c ?I=íí~ÅÜÉÇ= ÜÉêÉíç=~åÇ=åå=ÅçêéçêçêíÉÇ=ÜÉêÉáå=Äó=êÉÑêÉå ÅÉK=k çíï áíÜëí~åÇåÖ=íÜÉ=ÑçêÉÖçåÖI=åçíÜåÖ= ÜÉêÉáå=ëÜ-ää=ÄÉ=Åçåëíêì ÉÇ=~ë=ï ~áî åÖ=íÜÉ=êÉè ìáÉã Éåí=çÑççÄí~áåáåÖ=-éêêçî ~äçÑ=-ëêÉÅåÑåÅ= ì ëÉ=éÉêã áí=Ñçê=å=~ã Éåáíó=ÅÉåíÉê=~ë=êÉè ìáÉÇ=Äó=íÜÉ=mn JVV=l êÇåå~åÅÉ=ÄÉÑçêÉ= Åçã ã Éå ÅÉã Éåí=çÑÅçåëíêì Åíáçå=çÑíÜÉ=ã Éåáíó=ÅÉåíÉê=çå=íÜÉ=mêçéÉêíóK=få=íÜÉ=Éî Éåí=çÑ=åó= Åçåëíêì=ÄÉïï ÉÉå=íÜäë=êÉëçäî íáçå=~åÇ=~åó=ëì ÄëÉè ì Éåíäó=~éêêçî ÉÇ=ëêÉÅåÑåÅ=ì ëÉ=éÉêã áí= êÉä-íáåÖ=íç=íÜÉ=~ã Éåáíó=ÅÉåíÉê=êÉè ìáÉÇ=Äó=íÜäë=êÉëçäî íáçåI=íÜÉ=êêçî áëáçåë=çÑëì ÅÜëêÉÅåÑåÅ= ì ëÉ=éÉêã áí=ëÜ-ää=Åçåíêçäî K

GK **Parks and Trails** W=mÉÇÉëíêéá-å=íê~áäëI=çéÉå=ëé~ÅÉëI=~åÇ=åÉáÖÜÄçêÜççÇ=é~êâë=ëÜ-ää=ÄÉ= ÇÉî Éäçéã Éåí=ëì Äëí~åíá-ääó=åå=~ÅÅçêÇ~åÅÉ=ï áíÜ=íÜÉ=páíÉ=mä-å=åÇ=íÜÉ=m-êâë=mä-å=íí~ÅÜÉÇ=ÜÉêÉíç= ~ë=bñÜäÄáí=?d ?=åÇ=åå=ÅçêéçêçêíÉÇ=ÜÉêÉáå=Äó=êÉÑêÉå ÅÉK=k ç=ã çêÉ=íÜ-å=ÑÑíó=IRMF=Ä ì áäÇåÖ= éÉêã áë=ëÜ-ää=ÄÉ=äëëì ÉÇ=Ñçê=Çï Éäääå Ö=ì åáë=Åçåëíêì ÅíÉÇ=çå=äçíë=ì áíÜåå=íÜÉ=mêçéÉêíó=éêçê=íç= Åçã éäÉíáçå=çÑ=Åçåëíêì Åíáçå=çÑ=ää=é~êâëI=çéÉå=ëé~ÅÉëI=åÇ=íê~áäëêÉè ìáÉÇ=Äó=íÜäë=êÉëçäî íáçåK

H. **Screening Walls** WpåëíéåáåÖ=ï ~ää=ëÜ-ää=ÄÉ=Åçåëíêì ÅíÉÇ=í=íÜÉ=äçÅ-íáçåë=ëÜçï å=çå=íÜÉ=páíÉ= mä-å=åå=~ÅÅçêÇ~åÅÉ=ï áíÜ=íÜÉ=ÇÉëáÖåë=ëÉí=Ñçêí Ü-åå=íÜäë=êÉëçäî íáçåK=` çåëíêì Åíáçå=çÑ=ää= ëÅëíÉåáåÖ=ï ~ää=ëÜ-ää=ÄÉ=Åçã éäÉíÉÇ=éêçê=íç=äëëì ~åÅÉ=çÑ=-ÅÉêíáÑåÅ-íÉ=çÑçÅÅì é~åÅó=Ñçê=íÜÉ= Ñäëí=Çï Éäääå Ö=ì åáí=Åçåëíêì ÅíÉÇ=çå=íÜÉ=mêçéÉêíó=çíÜÉê=íÜ-å=ã çÇÉãíÜçã Éë=ì ëÉÇ=ëçäÉáó=Ñçê=ë~äÉë= çÑÑåÅÉ=é ìêçëÉëK

IK **Pattern Book** Wëçê=é ìêçëÉ=çÑíÜäë=êÉëçäî íáçåI=íÜÉ=éÜê~ëÉ=?m-ííÉêå= ççâ?=ã É~åë=s çäî ã É= ff=?m-ííÉêå= ççâ? çÑíÜÉ=*Mercer Crossing Design Guidelines* Ea ê~Ñ=ëçì êë? k çî Éã ÄÉê=TI= OMNSI=éêÉé~êÉÇ=Äó=d C^ = çåëì äí~åíëI=i ` I=E?íÜÉ=m-ííÉêå= ççâ?HI=~=Åçéó=çÑ=ï ÜåÅÜ=äë=çå=

ÑäççÇ=áå=íÜÉ=ÑáêëíÉê=çÑ=íÜÉ=` áíó=pÉÅêÉí~êó=~åÇ=áå=Åçêêçë=íÉÇ=~ë=~=ÑìääóeëÉí=Ñçêí=ÜÜÉêÉáå=Äó=êÉÑÉêÉåÅÉ=íç=íÜÉ=ç~íÉ=~åÇ=åì ã ÄÉê=çÑ=íÜáë=çêÇáå~åÅÉK

JK **Relationship to PD-99 Ordinance**W=få=~ÅÅçêÇ~åÅÉ=ï áíÜ=íÜÉ=éêçî áëáçåë=çÑ=íÜÉ=ma JVV=l êÇáå~åÅÉI=ì éçå=íÜÉ=ÉÑÑÉÅíáî É=Ç~íÉ=íÜáë=çêÇáå~åÅÉ=ëÜ~ää=ÅçåëíáíìíÉ=~ÇÇáíáçå~ä=êÉÖì ä~íáçåë=Öçî ÉêåáåÖ=íÜÉ=ì ëÉ=~åÇ=ÇÉî ÉäçéãÉåí=çÑ=íÜÉ=mêçéÉêíó=~ë=ÑìêíÜÉê=ï ÜÉêÉ=çêÇáå~åÅÉ=~åó=éêçî áëáçå=çÑ=íÜÉ=ma JVV=l êÇáå~åÅÉXéêçî áÇÉÇI=Üçï Éî ÉêI=íÜ~í=ï ÜÉêÉ=áå=íÜÉ=Éî Éåí=çÑ=~åó=ÅçåÑäáÅí=çê=áåÅçåëáëíÉåÅó=ÄÉíï ÉÉå=íÜáë=çêÇáå~åÅÉI=áåÅäìÇáåÖ=Äì í=åçí=äáãáíÉÇ=íç=íÜÉ=m~ííÉêå=_ççâ=~åÇ=íÜÉ=ma JVV=l êÇáå~åÅÉI=íÜÉ=éêçî áëáçåë=áå=íÜÉ=ma JVV=l êÇáå~åÅÉ=ëÜ~ää=Åçåíêçä.

SECTION 2.=qÜáë=çêÇáå~åÅÉ=ëÜ~ää=ÄÉÅçãÉ=ÉÑÑÉÅíáî É=áãã ÉÇá~íÉäó=ì éçå=áíë=~ééêçî ~äK

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

^ qqbpq W

^ mmol s ba W

|||||||||||||||||||||||||||||||||||||

^ ã ó=mäâ~å~I ` áíó=pÉÅêÉí~êó

||||||||||||||||||||||||||||||||||||||

_ çÄ=mÜáääáéëI= ~óçê

^ mmol s ba =^ p=ql =cl oj W

||||||||||||||||||||||||||||||||||||||

mÉíÉê=d Kp ã áíÜI= áíó=^ ííçêåÉó

EâÄäWOQNS WNVOSF

Resolution No. 2016-116
Exhibit “A” – Description of Property

^ =íê~Åí=çÑä=åÇ=çì í=çÑ=íÜÉ=cê~åÅäë=j áääÉê=pì êî ÉóI=^ Äëíê~Åí=k çK=VOS=~åÇ=ëäíì ~íÉÇ=áå=íÜÉ= áíó=çÑ= c~êã Éêë= ê~åÅÜI=a ~ää=ë= çì åíóI=qÉñ~ëI=~åÇ=ëì êî ÉóÉÇ=Äó=j áääÉê=pì êî ÉóáåÖI=fåÅKçÑe ì êëíI=qÉñ~ë=áå= k çî Éã ÄÉê=OMNRI=ë~áÇ=íê~Åí=ÄÉáåÖ=~=éçëíáçå=çÑ= äçÅâ=a I=t Éëíëá ÇÉ=^ ÇÇáíáçå=pÉÅíáçå=NI=~å=~ÇÇáíáçå= íç=íÜÉ= áíó=çÑe ~êã Éêë= ê~åÅÜ=ÅÅçêÇáåÖ=íç=íÜÉ=éä~í=ëÉÅçêÇÉÇ=ë=a çÅì ã Éåí=k çK=OMMSMMNTOTMU=çÑ= íÜÉ=o É~ä=mêçéÉëíó=o ÉÅçêÇë=çÑa ~ää=ë= çì åíóI=qÉñ~ëI=qÉñ~ë=åÇ=ÄÉáåÖ=ã çêÉ=é~ëíáÅì ä~êäó=ÇÉëÅáÄÉÇ= Äó=ã ÉíÉë=åÇ=Äçì åÇë=ë=Ñçäçï ëW

` çã ã Éå ÅáåÖ=~í=~=NLO=áåÅÜ=?j fi i bo=RSSR?=Å~éé ÉÇ=ëíÉÉä=êçÇ=Ñçê=íÜÉ=ã çëí=ï ÉëíÉêäó=åçëíÜï Éëí= ÅçêåÉê=çÑë~áÇ=_ äçÅâ=a I=ë~áÇ=êçÇ=ÄÉáåÖ=íÜÉ=ëçì íÜÉ~ëíÉêäó=Éå Ççê=Ñ~=Åçêå Éê=Åäáé=Ñçê=íÜÉ=É~ëíÉêäó=êáÖÜïJ çÑï ~ó=äáåÉ=çÑï ì å~=o ç~Ç=åÇ=íÜÉ=ëçì íÜÉêäó=êáÖÜïJçÑï ~ó=äáåÉ=çÑt áíáåÖçå=mä~ÅÉXqÜÉå ÅÉ=k çëíÜ= QO=ÇÉÖêÉÉë=OT=ã ááì íÉë=NU=ëÉÅçÇë=b ~ëí=ï áíÜë~áÇ=Åçêå Éê=Äáé=~=Çäëí~åÅÉçÑ=PRKOR=ÑÉÉï=íç=~=NLO=áåÅÜ= Å~éé ÉÇ=ëíÉÉä=êçÇ=Ñçì åÇ=Ñçê=íÜÉ=åçëíÜÉêäó=Åçêå Éê=íÜÉêÇçÑXqÜÉå ÅÉ=k çëíÜ=UT=ÇÉÖêÉÉë=PT=ã ááì íÉë= OP=ëÉÅçÇë=b ~ëí=ï áíÜ=ÜÉåçëíÜÉêäó=Äçì åÇ~êó=äáåÉçÑë~áÇ=_ äçÅâ=a =åÇ=ï áíÜë~áÇ=ëçì íÜÉêäó=êáÖÜïJçÑ ï ~ó=äáåÉ=~=Çäëí~åÅÉçÑ=PVVKTS=ÑÉÉï=íç=~=NLO=áåÅÜ=?j fi i bo=RSSR?=Å~éé ÉÇ=ëíÉÉä=êçÇ=ëÉï=Ñçê=íÜÉ= ÄÉÖåáåáÖçÑ=~=Åì êî É=íç=íÜÉ=ãÉÑï=ï áíÜ=~=ê~Çäë=çÑ=NMVSKPO=ÑÉÉï=åÇ=ï ÜçëÉ=ÅÜçêÇ=ÄÉ~êë=k çëíÜ=TQ ÇÉÖêÉÉë=MT=ã ááì íÉë=OP=ëÉÅçÇë=b ~ëí=í=RNNKUS=ÑÉÉïXqÜÉå ÅÉ=É~ëíÉêäó=Åçáíáåì áåÖ=ï áíÜë~áÇ=åçëíÜÉêäó= Äçì åÇ~êó=äáåÉ=åÇ=ë~áÇ=ëçì íÜÉêäó=êáÖÜïJçÑï ~ó=äáåÉ=åÇ=ï áíÜë~áÇ=Åì êî É=äçåÖ=å=~êÅ=aÉåÖÜçÑ= RNSKSP=ÑÉÉï=íç=~=NLO=áåÅÜ=?j fi i bo=RSSR?=Å~éé ÉÇ=ëíÉÉä=êçÇ=ëÉï=Ñçê=íÜÉ=åçëíÜÉêäó=Äçì åÇ~êó=äáåÉ= ë~áÇ=ëçì íÜÉêäó=êáÖÜïJçÑï ~ó=äáåÉ=~=Çäëí~åÅÉçÑ=OVNKSN=ÑÉÉï=íç=~=NLO=áåÅÜ=?j fi i bo=RSSR?=Å~éé ÉÇ= ëíÉÉä=êçÇ=ëÉï=Ñçê=íÜÉ=éçåí=çÑ=ÄÉÖåáåáÖçÑ=íÜÉ=íê~Åí=ÇÉëÅêáÄÉÇ=íÜÉêÉåáX

qÜÉå ÅÉ=k çëíÜ=SM=ÇÉÖêÉÉë=PT=ã ááì íÉë=OP=ëÉÅçÇë=b ~ëí=Äçåíáåì áåÖ=ï áíÜë~áÇ=åçëíÜÉêäó=Äçì åÇ~êó=äáåÉ= ~åÇë~áÇ=ëçì íÜÉêäó=êáÖÜïJçÑï ~ó=äáåÉ=~=Çäëí~åÅÉçÑ=TVRKUO=ÑÉÉï=íç=~=NLO=áåÅÜ=?j fi i bo=RSSR?=Å~éé ÉÇ= ëíÉÉä=êçÇ=ëÉï=Ñçê=íÜÉ=ÄÉÖåáåáÖçÑ=~=Åì êî É=íç=íÜÉ=êáÖÜï=ï áíÜ=~=ê~Çäë=çÑ=VQTKVP=ÑÉÉï=åÇ=ï ÜçëÉ=ÅÜçêÇ= ÄÉ~êë=k çëíÜ=TQ=ÇÉÖêÉÉë=PM=ã ááì íÉë=NN=ëÉÅçÇë=b ~ëí=í=QRQKUM=ÑÉÉïX

qÜÉå ÅÉ=É~ëíÉêäó=Äçåíáåì áåÖ=ï áíÜë~áÇ=åçëíÜÉêäó=Äçì åÇ~êó=äáåÉ=åÇ=ë~áÇ=ëçì íÜÉêäó=êáÖÜïJçÑï ~ó=äáåÉ= ~åÇ=ï áíÜë~áÇ=Åì êî É=äçåÖ=å=~êÅ=aÉåÖÜçÑ=QRVKU=ÑÉÉï=íç=~=NLO=áåÅÜ=?j fi i bo=RSSR?=Å~éé ÉÇ=ëíÉÉä= êçÇ=ëÉï=Ñçê=íÜÉ=ÉåÇçÑë~áÇ=Åì êî ÉX=

qÜÉå ÅÉ=pçì íÜ=MN=ÇÉÖêÉÉë=NN=ã ááì íÉë=OS=ëÉÅçÇë=b ~ëí=~=Çäëí~åÅÉçÑ=SUSKMU=ÑÉÉï=íç=~=NLO=áåÅÜ= ?j fi i bo=RSSR?=Å~éé ÉÇ=ëíÉÉä=êçÇ=ëÉï=ÑçêX

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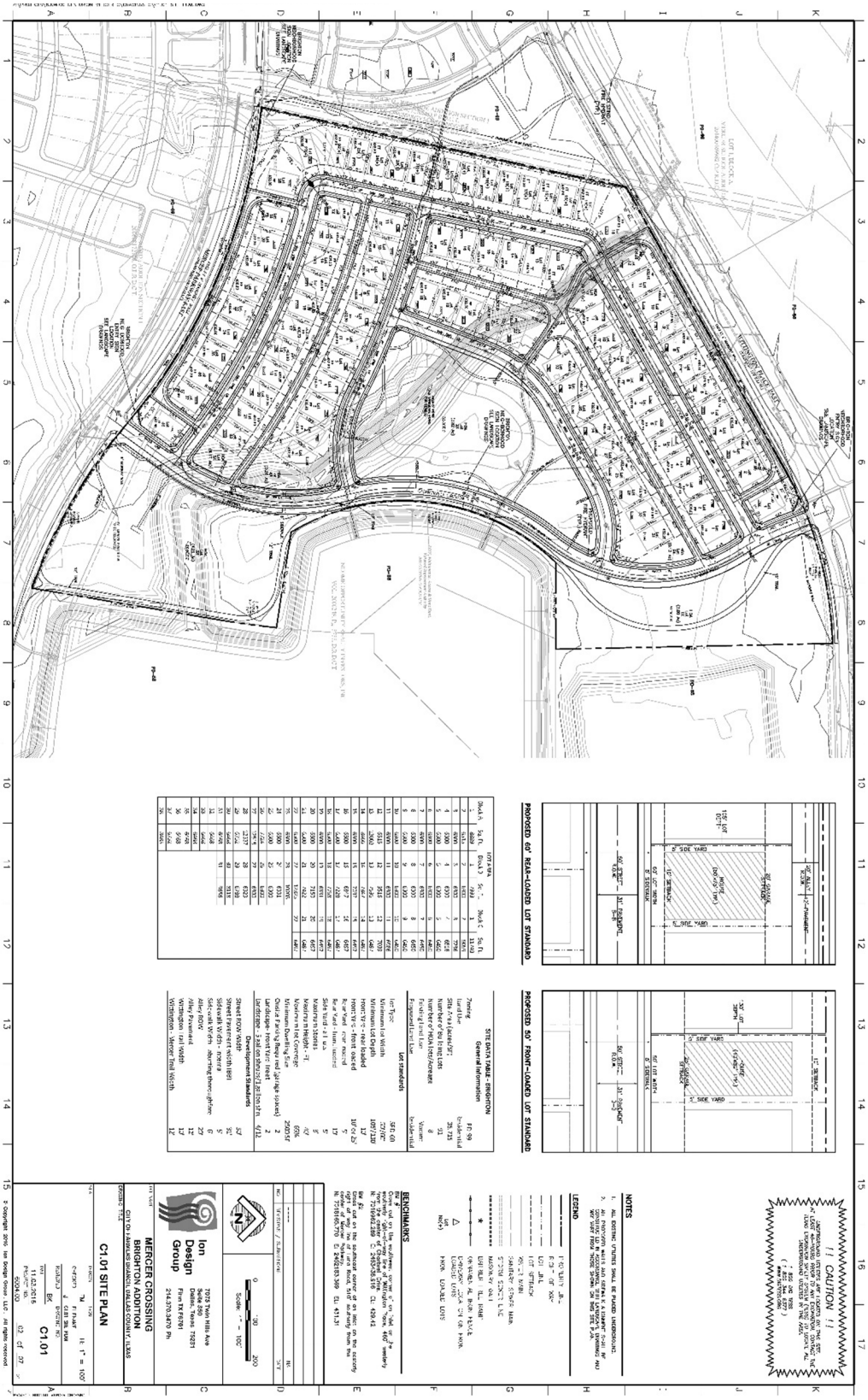

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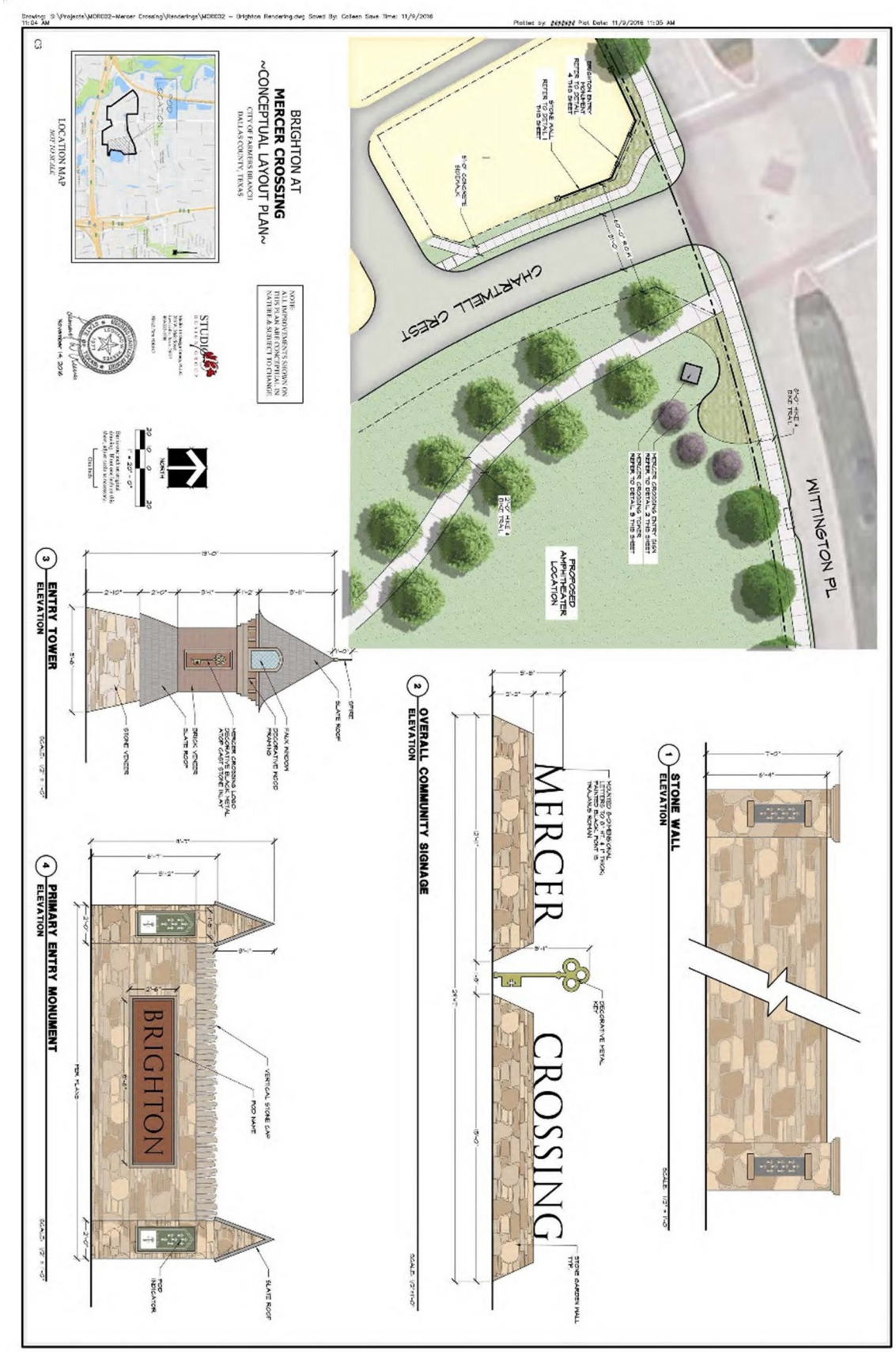
Exhibit "C" – Landscape Plan

Resolution No. 2016-116
Exhibit "D" – Entry Sign Plans

Resolution No. 2016-116
Exhibit "D" – Entry Sign Plans (cont.)



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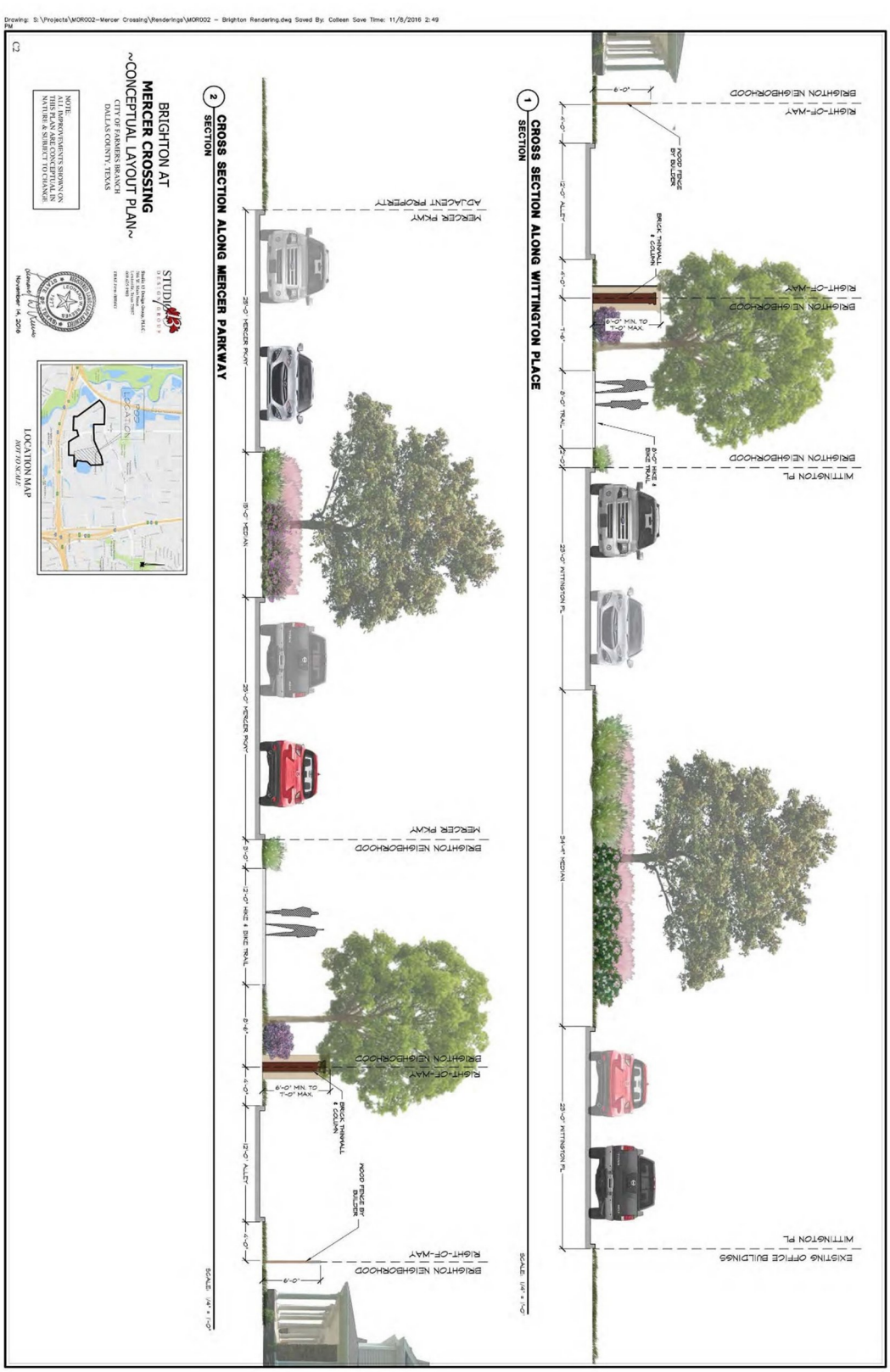

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Exhibit "F" – Amenity Center

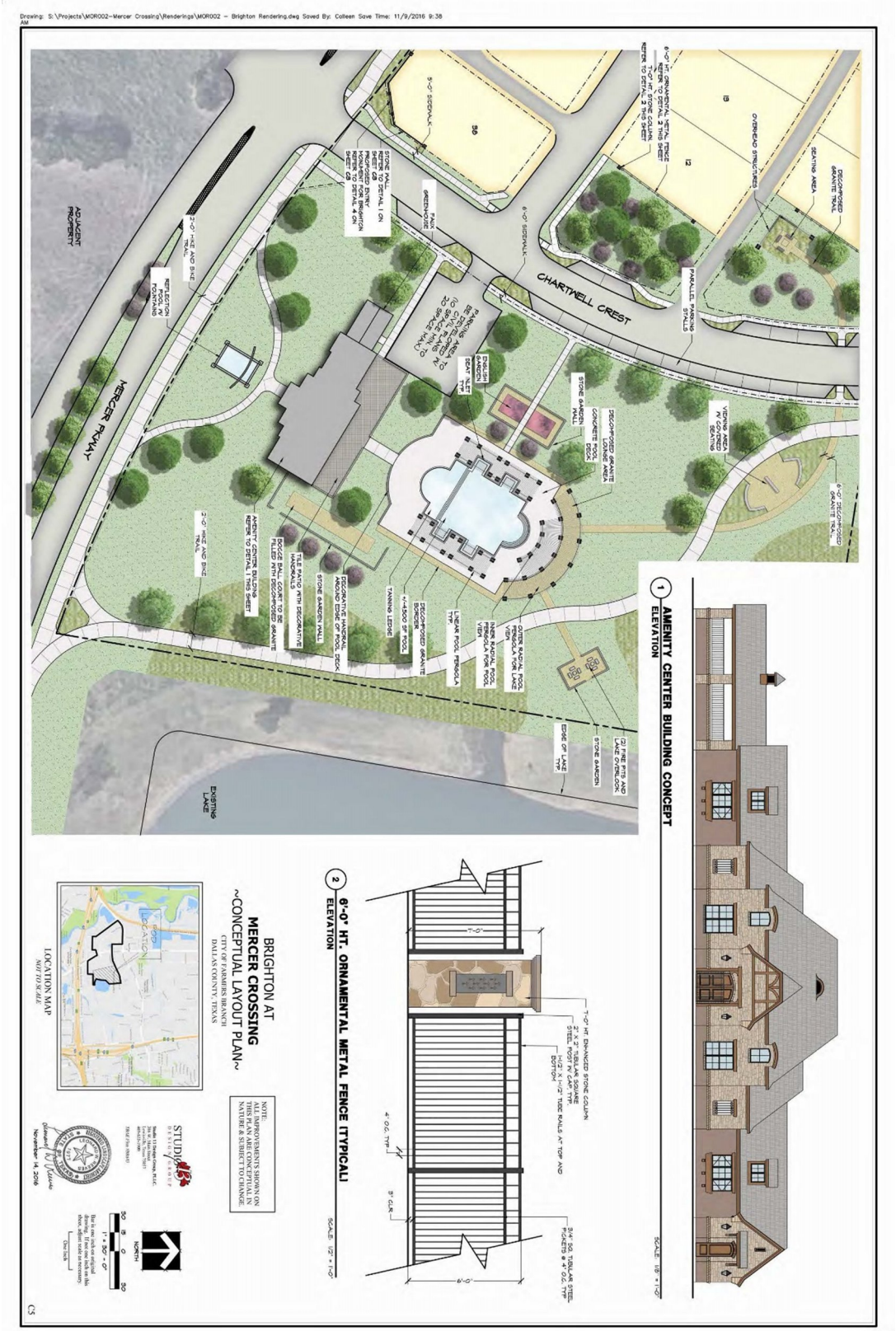

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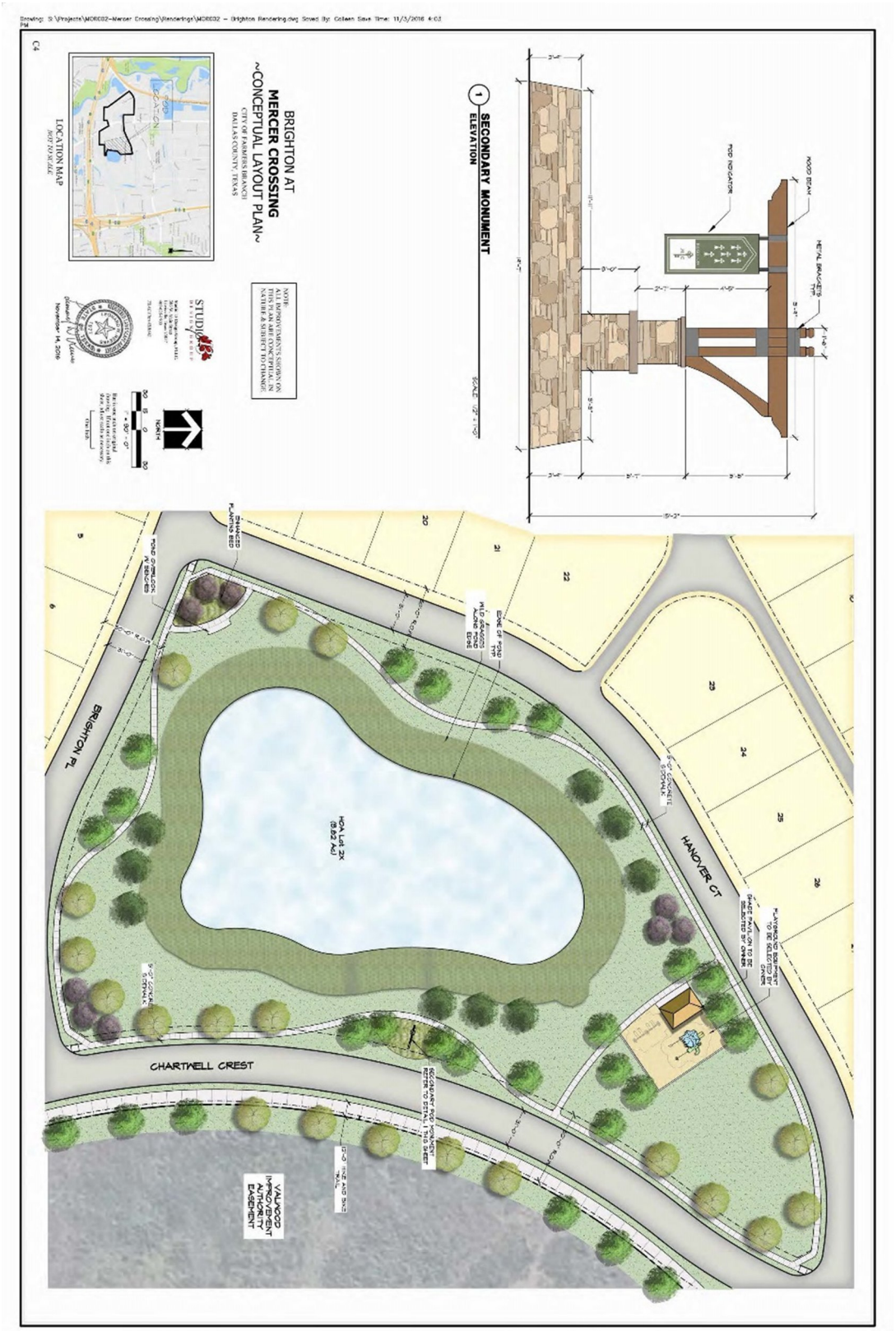
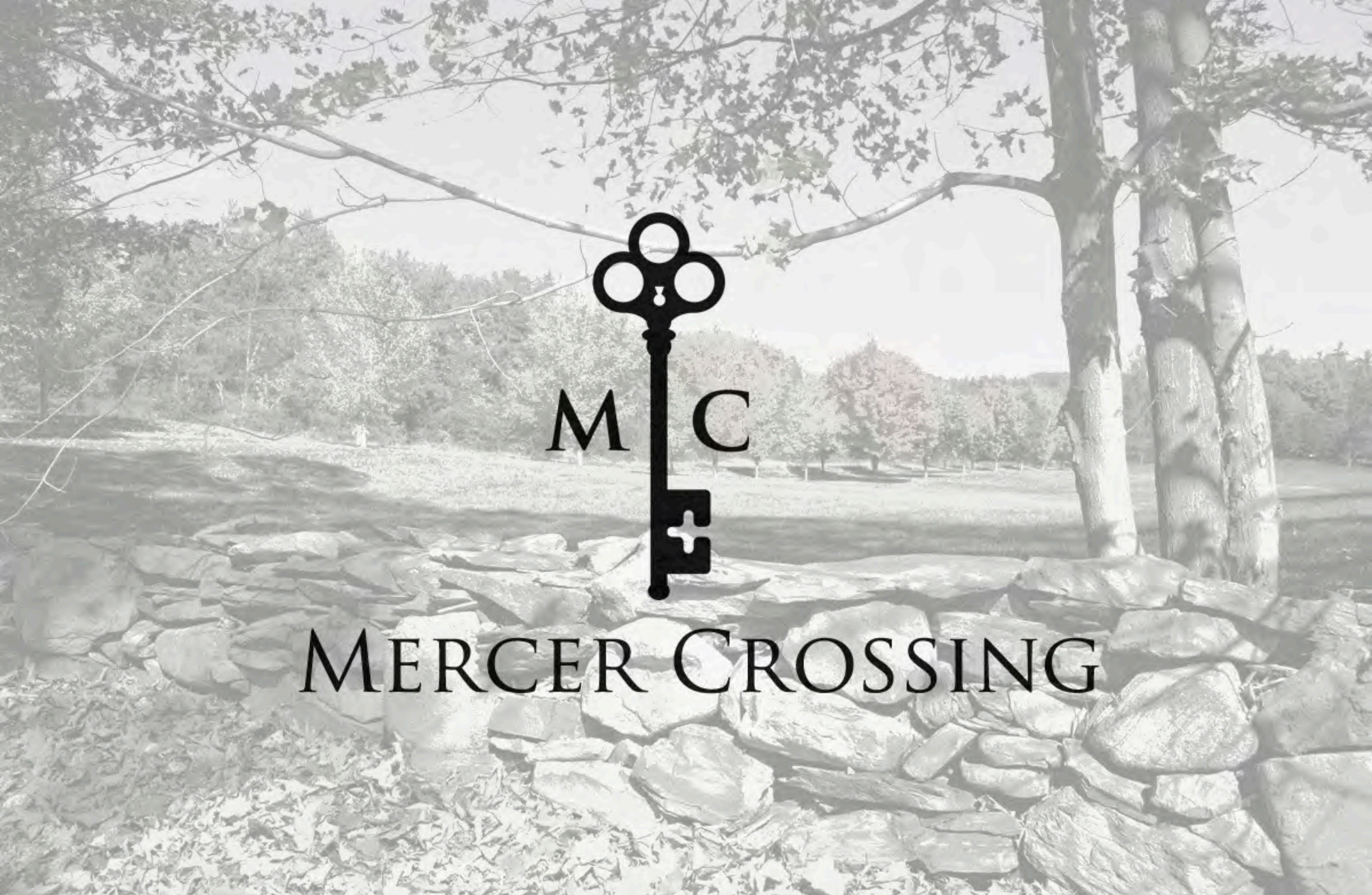
Exhibit "G" – Community Park Plan





Mercer Crossing

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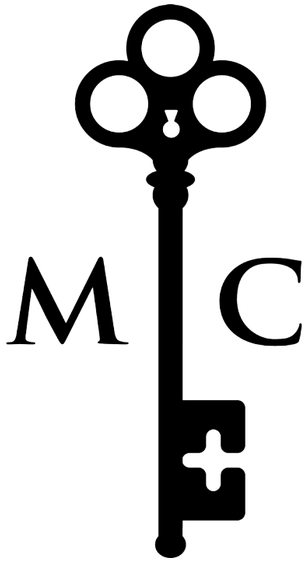

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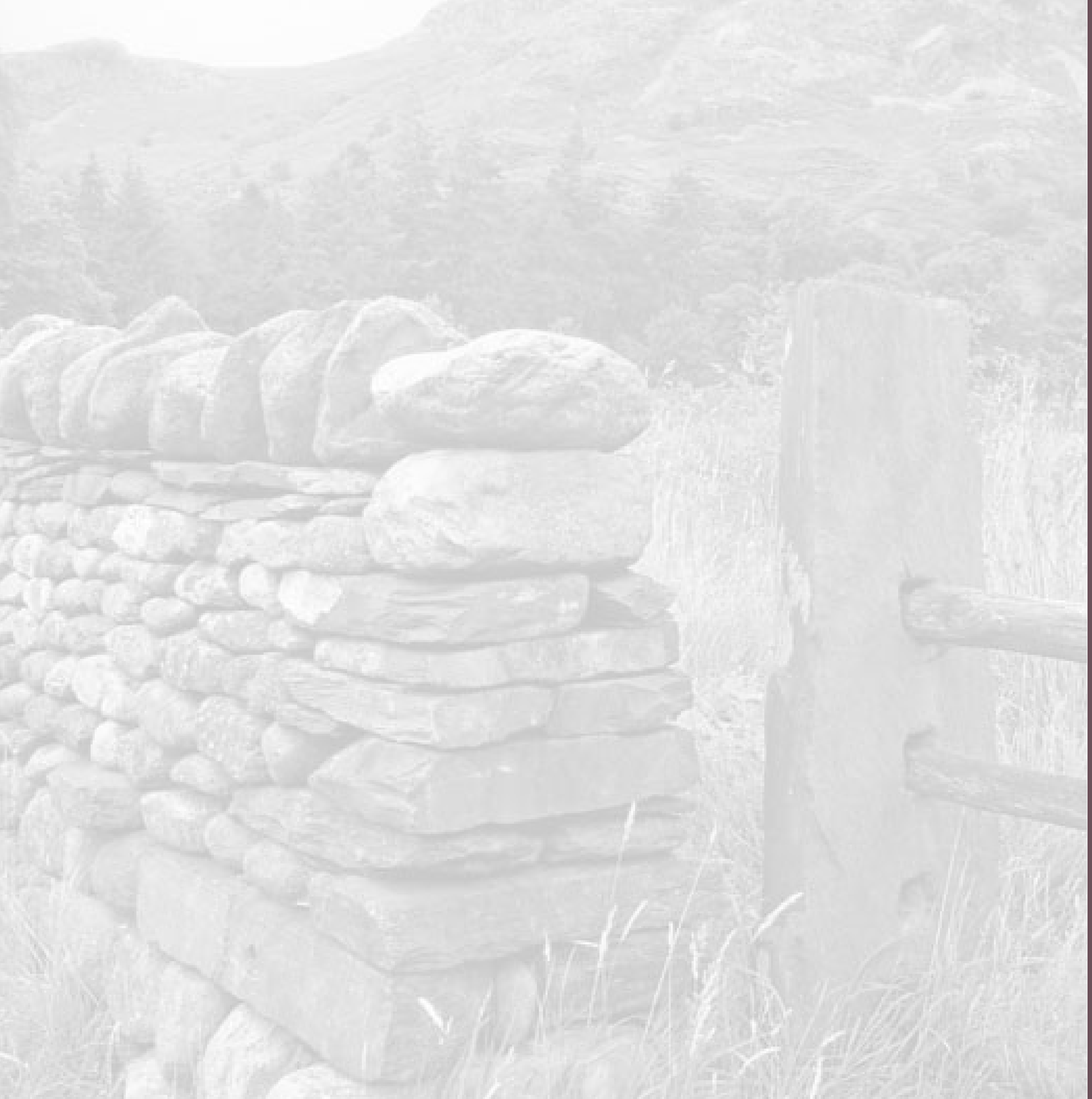


Section 1
Introduction

1.1 Theme and Character

1.2 Purpose of Design Guidelines

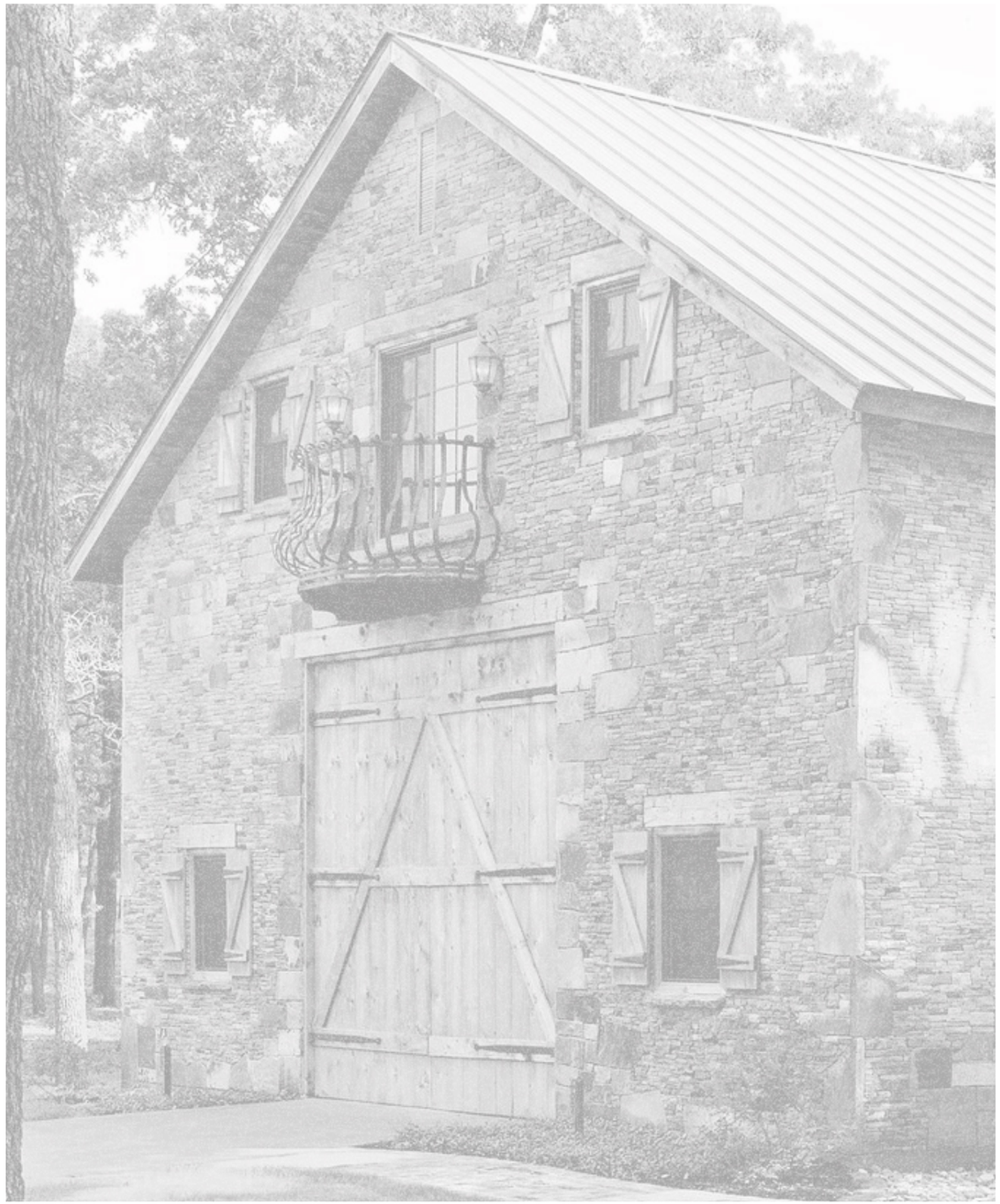
1.3 Architectural Review Committees

Texas Tudor is a contemporary application of historically inspired Tudor architectural elements which serve as a binding theme across Mercer crossing, a several hundred acre master planned, mixed-use community. Key English Tudor visual elements consist of steep multi-gabled roof lines, slate and clay shingles accents, decorative half timbering and stucco, brick and stone facades, enhanced flat, eyebrow, arched and gothic accented portals, paned windows and elaborated stone and brick chimneys. Contemporary Texas style consist of multi-sloped metal and shingled roofs, metallic or wood window canopies, porches, windows with shutters; and brick, stone and stucco facades often with vertical or horizontal siding. Texas Tudor weaves these elements into the construction vernacular of Mercer Crossing through consistent application into the built environment (buildings, landscaping, screening and signage elements) while also accommodating the native Texas Materials available as part of the sustainable development movement.

Mercer Crossing is master planned community that incorporates a compatible mix of uses, such as retail, office, commercial, and residential, integrated with open space areas and pedestrian networks for enhanced community interaction and enjoyment. The purpose of these design guidelines is to facilitate the growth and ensure the quality of character of Mercer Crossing by establishing design requirements and criteria to ensure that the development is centered around a cohesive design theme. These design guidelines will assist property owners, developers, home builders, architects, engineers, landscape architects, planners, and other consultants by providing the framework and the design intent of the community so that the theme and style are consistent throughout.

Design Guidelines are establish to provide a 'guide' to the look and feel of the community. This document is intended to provide a flexible framework that may need to be adjusted as needed in order to respond to variable market conditions or to evolve to other circumstances as this project is developed over a period of time.

Any guideline that is included herein is more strict than the approved PD Ordinance, the PD Ordinance shall control. The terms 'shall' or 'must' require compliance with the applicable regulations. The terms 'should', 'may' or 'encourage' indicate that the guideline is favorable but not required.



Mercer Crossing Homeowner's Association

There shall be one mandatory homeowner's association (HOA) for all the residential neighborhoods. The Mercer Crossing Homeowner's Association will be required to manage and maintain the common areas and common improvements within the residential areas of the community. The association's responsibility will be outlined in the filed CC&R's and shall at least include maintainance of entrance signs, screening walls, trails, and open spaces. Each neighborhood shall be represented in the HOA.

Mercer Crossing Property Owner's Association

There shall be a mandatory property owner's association (POA) for the commercial areas within Mercer Crossing. The Mercer Crossing POA shall be required to manage and maintain the common areas and common improvements within the commercial areas. The association's responsibility will be outlined in the filed CC&R's and shall at least include maintainance of ground signs, screening walls, trails, and open spaces. Each commercial area shall be represented in the POA.

Mercer Crossing shall have two separate Architectural Review Committee's (ARC). One ARC shall be responsible for the oversight and review of residential development within the residential areas of Mercer Crossing and the other ARC shall be responsible for the oversight and review of the commercial development of the commercial areas of Mercer Crossing.

Mercer Crossing Residential ARC

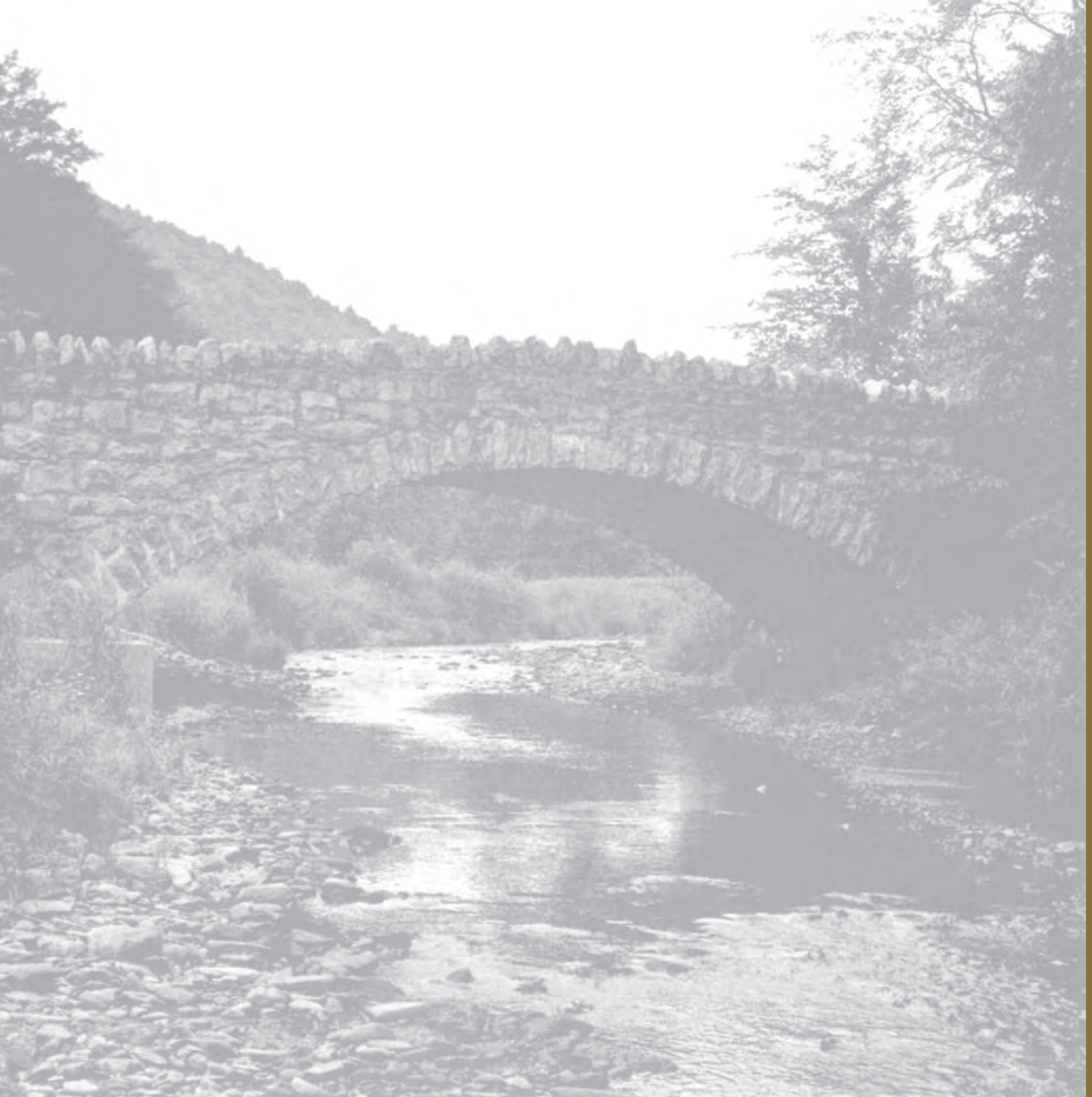
This committee shall be established by the Mercer Crossing Homeowner's Association as described in the Conditions, Covenants, and Restrictions (CC&R's) filed in the Real Property Records of Dallas County. The purpose, administration and responsibilities of this committee will be described in detail in the CC&R's. The purpose of the Mercer Crossing Residential ARC shall include the following:

- To ensure the Design Guidelines are being followed.
- To encourage the high-quality construction of homes.
- To oversee, review, and approve the exterior elevations and building materials consistent with the Design Guidelines.
- To preserve the common community areas and features within the Residential Areas.

Mercer Crossing Commercial ARC

This committee shall be established by the Mercer Crossing Property Owner's Association as described I the Conditions, Covenants, and Restriction (CC&R's) file in the Real Property Records of Dallas County. The purpose, administration, and responsibilities of this committee will be described in the detail in the CC&R's. The purpose of the Mercer Crossing Commercial ARC shall include the following:

- To ensure the Design Guidelines are being followed as each commercial development is proposed.
- To encourage the construction of high-quality improvements within the Commercial Areas.
- To oversee, review, and approve building elevations, building materials, and site improvements consistent with the Design Guidelines.
- To preserve the common areas and features within the Commercial Areas.

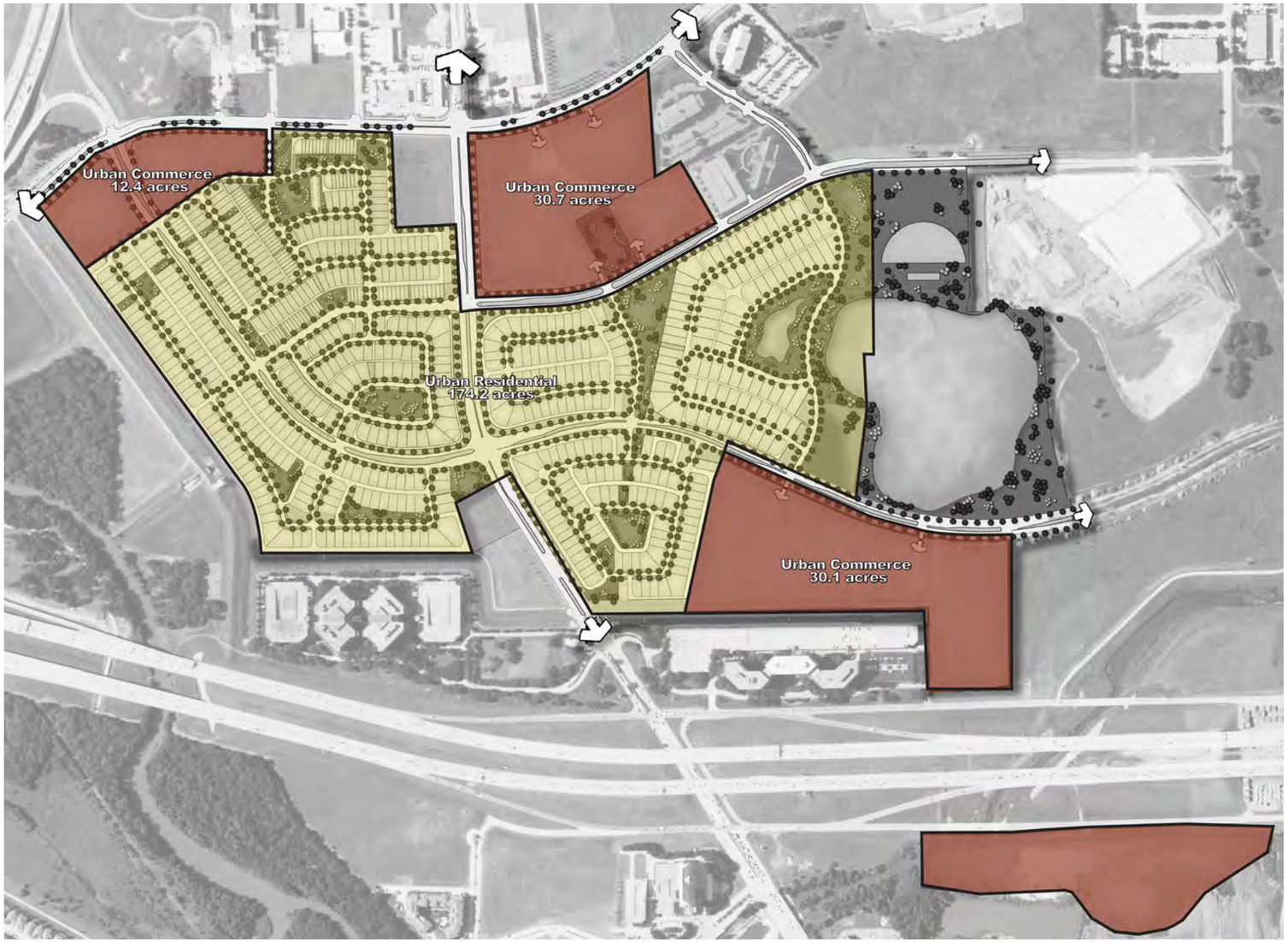


Section 2
Land Use

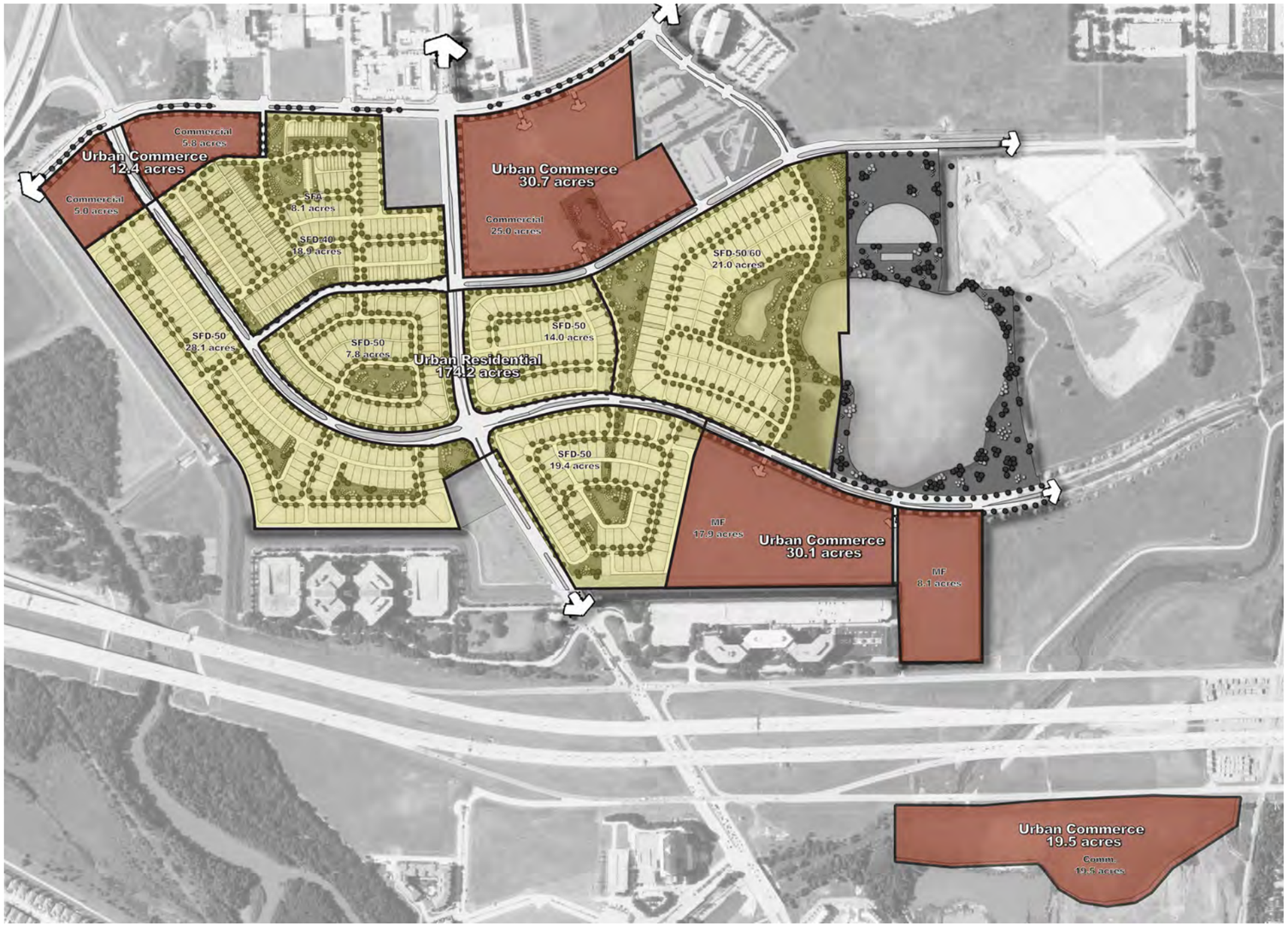
2.1 Development districts

2.2 Subareas

2.3 Land Use Plan



The development districts for Mercer Crossing are the Urban Commerce District and the Urban Residential District, each of which is composed of subareas that delineate different land uses or specific residential categories. The different districts and subareas ensure the harmonious transition between land use categories, resulting in a collection of distinct pods that form a unique and unified whole.



Urban Commerce

The Urban Commerce District contains approximately 92.7 acres of land in the Mercer Crossing development. The intent for this district is to allow the development of small, single-lot, one-story, single-purpose commercial uses, as well as larger shopping centers, retail power centers, mixed-use buildings, corporate offices, and high-density multi-family residential. Subareas include Commerce and Multi-Family Residential.

- Commerce Subarea:

Typical uses in the Commerce Subarea may include (but are not limited to) Business Service, Office, Personal Service, Retail Service, Retail Specialty, Retail Trade, Studio Uses, Commercial Indoor Amusement, Restaurants, and Coffee Shops. Primary or Secondary Schools are permitted, as are Colleges or Universities. This subarea should be located near thoroughfares and intersections to improve visibility for tenants.

- Multi-Family Residential Subarea:

Uses may include High-Density Multi-Family Residential, with or without ground floor commercial uses, or Senior/Assisted Living Facilities.

Urban Residential

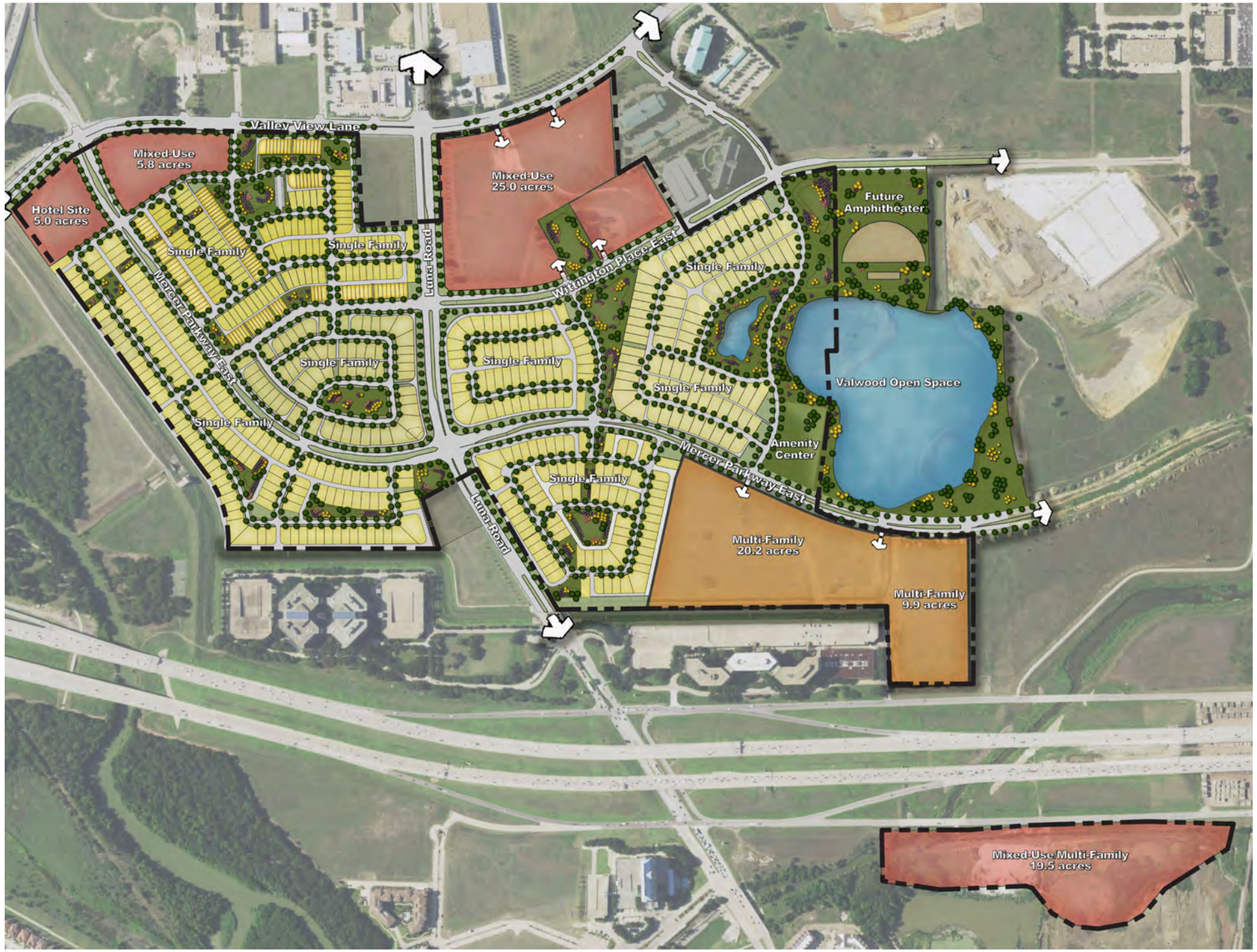
The Urban Residential District contains approximately 174.2 acres of land in the Mercer Crossing development. The intent of this district is to provide a variety of residential lot types that can serve individuals and families at all stages of life. Subareas include Single-Family Detached (SFD) Residential, and Single-Family Attached (SFA) Residential.

- Single-Family Detached Subarea:

The Single-Family Detached Subarea features residential lots at 40-, 50-, and 60-foot widths. Each neighborhood will be mostly comprised of a certain lot type, although all should adhere to the same Texas Tudor look and feel.

- Single-Family Attached Subarea:

The Single-Family Attached Subarea consists of townhomes, and is located near the Urban Commerce District. The townhomes serve as a higher-density residential use, providing a harmonious transition from commercial to lower-density residential uses.



The land use plan for Mercer Crossing is a visual illustration of the proposed districts. The districts are proposed as shown in order to provide for a balanced and sustainable mix of land uses, which comes from a compatible mixture of residential and commerce uses in close proximity to each other.

Land Uses	Acres	%	
Commerce / Hotel	**45.3**	17	
Multi-Family (tract 1 north of 635)	**26**	13.5	Not to exceed 1250 units
Multi-Family (tract 2 south of 635)	**10**		Not to exceed 500 units
Single Family	**117.3**	44	
Attached	8.1		Not to exceed 111 lots
Detached	109.2		
60 ft wide lots	17.6		Not to exceed 73 lots
50 ft wide lots	71.2		Not to exceed 323 lots
40 ft wide lots	18.9		Not to exceed 100 lots
School (potential site)	**8.6**	**3.2**	
Parks / Open Space	**26.8**	**10**	
Street ROW and miscellaneous	**32.9**	**12.3**	
TOTAL	**266.9**	**100**	

Development Districts	Acres	%
Urban Commerce	92.7	34.7
Urban Residential	174.2	65.3
TOTAL	**266.9**	**100**

Section 3
Streets & Site Amenities

3.1 Street Classification

3.3 Enhanced Pavement & Crosswalks

3.3 Lighting

3.4 Seating

3.5 Bollards & Planters

3.6 Trash Receptacles

3.7 Bike Racks & Pet Waste

3.8 Shade Structures

3.9 Amenity Center

The streets in Mercer Crossing will serve a wide variety of traffic patterns – from divided arterials to quiet residential streets. There are three main street classifications within Mercer Crossing: Major Streets, Minor Streets, and Alleys.

Major Streets include any street section with a right-of-way width of 80 feet or greater. These streets are intended to carry the majority of the through traffic, and should provide connectivity to Valley View Lane and I 635. Major streets should have street trees planted within the parkway with a spacing of no more than twenty-five feet on center. For major streets with on-street parking, one street tree shall be planted in each bump-out for parking.

Minor Streets will provide connectivity within residential areas and from residential areas to major streets. These streets should have fairly low traffic and encourage an active pedestrian street life and community feel. Minor streets should have street trees planted within the parkway with a spacing of no greater than thirty-five feet on center. For both major streets and minor streets, street trees shall be at least three inches in caliper measured four feet above grade, and not less than ten feet in height measured from the base of the main trunk at the time of planting.

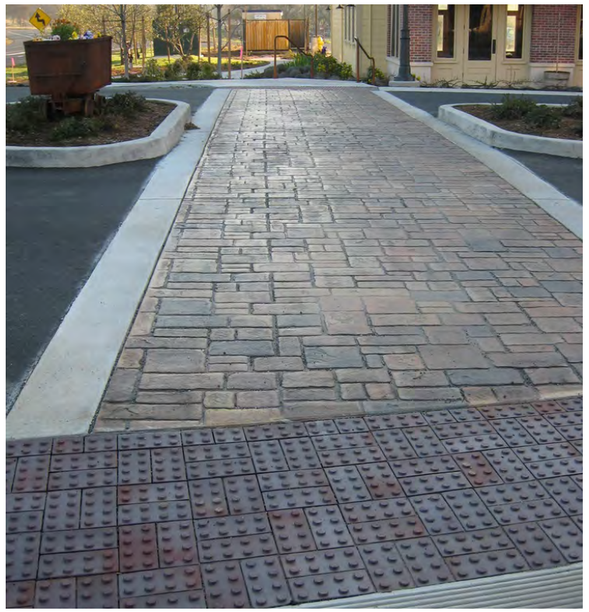
Alleys are located in residential neighborhoods to provide access to rear-loading garages. These streets are meant to provide access to residential lots; they should not be used for through traffic. No street trees are required for this street section.

Major Street
> 100 ft ROW

Major Street
80 ft ROW

Minor Street

Alley

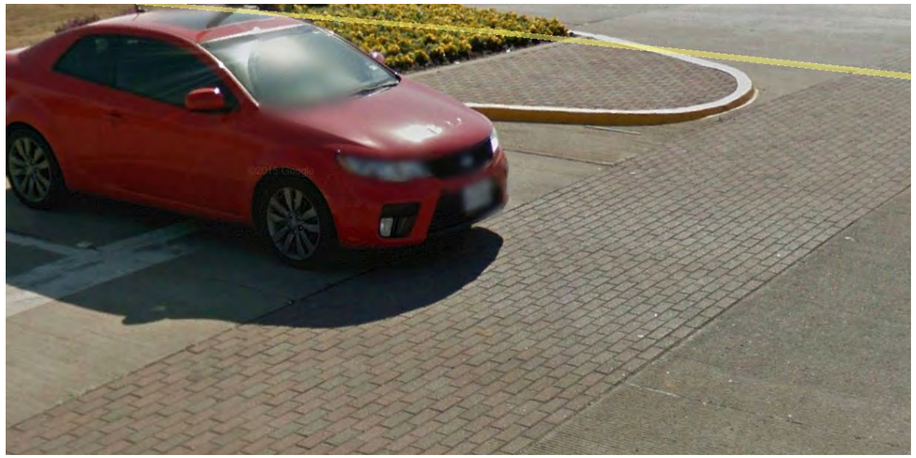


This is a great example of an approved ADA crosswalk using stamped and stained concrete.

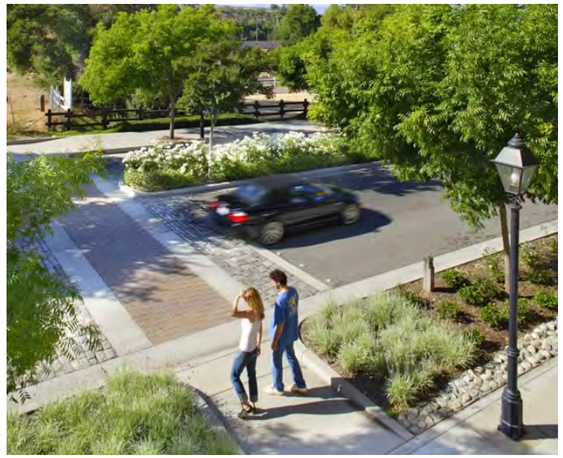
The combination of sloped corner curbs and bollards may be incorporated with crosswalks within the commercial areas.

Enhanced pavement must be used at major intersections within the Mercer Crossing development. Decorative brick or stone elements shall be used to create a visual distinction between vehicular and pedestrian traffic. This creates a human scale that gives a sense of security when crossing a busy street, and notifies motorist to reduce their speed. All materials must follow ADA requirements and provide safe passage for all pedestrian traffic.

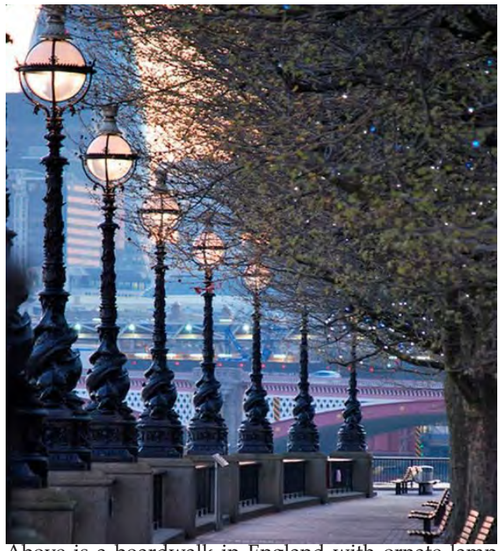
The use of bollards and other pedestrian-friendly enhancements may also be used at intersections and in the commercial areas. All bollards will adhere to the materials chosen in the site amenities section.



The above brick patterned crosswalk is what is in current use along Luna. All crosswalks with in the Mercer Development must match this paving pattern and color.



This ideal enhanced crosswalk gives the street a human scale and provides a sophisticated urban feel.



Above is a boardwalk in England with ornate lamp post made of cast iron and painted black. Although too ornate for Mercer Crossing, the materials are a great example.

This example is still in the English setting, but closer to the intended look for Mercer Crossing.

This modern day example is made to look like those in England. Night sky fittings are also an option.

On the streets of England bollards are also made of cast iron and painted black.

The center and right images are two examples of bollard lighting that would also mimic the intended Texas Tudor theme.

While site amenities are among the simplest enhancements to a development, they can go a long way towards conveying a specific design theme. Site amenities in Mercer Crossing should be attractive, durable, and practical, as well as contributing to the overall Texas Tudor theme. All site amenities shall be cohesive and consistent in using all black metal, taking into account longterm maintenance.

The lighting in Mercer Crossing shall reinforce the Texas Tudor theme. Street lamps in residential, commercial, and open space areas should be inspired by vintage gas lamps, with varying degrees of ornamentation being acceptable. Traditional English lamp post were made of cast iron with a black finish. All lighting shall be made of similar materials with the same look.

Streetlights in the Urban Commerce districts may feature Mercer Crossing banners on the lamppost. Other enhancements, such as additional base ornamentation or planters attached to the base, may be acceptable. In addition, streets lights must be located within the parkway of the right-of-way in all districts.

All lighting in residential areas shall adhere to "dark skies" ordinances to prevent light pollution and reduce nuisance to residents. Homeowners shall also install porch lights; those visible from the rights-of-way should also be inspired by vintage gas lamps.

In commercial areas, all lighting design standards must comply with City ordinances, as well as the approved PD zoning ordinance. In addition to streets lamps, all other commercial lighting should reinforce the Texas Tudor theme by maintaining a subtle, natural appearance, without sacrificing safety.

This English park provides sufficient seating along the shown path. All open space areas with in Mercer Crossing shall provide adequate seating.

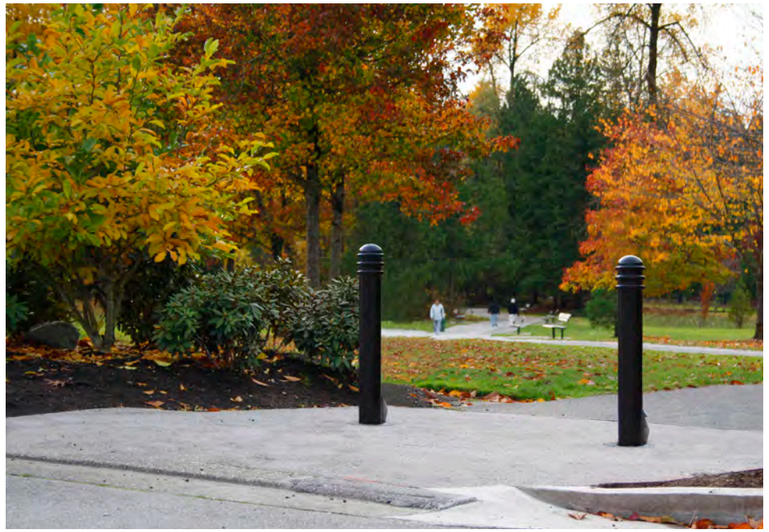
Typical English benches are very ornate in nature, constructed of cast iron or metal substitute, and have a black finish.

Outdoor public seating areas in Mercer Crossing should reinforce the unified design theme. Benches should be inspired by Texas Tudor precedents, and may be constructed of cast iron, metal, or any combination thereof. All seating areas should be strategically placed in the Urban Commerce districts as well as the parks and open space areas throughout Mercer Crossing.

In addition to serving as a resting place, benches and seating areas encourage pedestrian activity and community interaction by providing a place for neighbors to gather, a spot to sit and people-watch, or a place to enjoy nature. An adequate number of seating must be provided in all urban commerce districts, around children's play equipment, and along recreational trails.

Above is a prime example of a Texas Tudor bench. It's black finish and leg detailing set the standard for Mercer Crossing.

This is another great example of an acceptable bench selection.



Bollards at trail intersections not only discourage cars from utilizing trails, but also provide pedestrian safety in the event and accident occurs at this location.

These are two examples of bollard types that should be used within Mercer Crossing.

The use of bollards is encouraged at the intersections of pedestrian trails or walkways and streets. Bollards should be placed appropriately to protect pedestrians, while still allowing sufficient spacing for strollers, bicyclists, and for all ADA accessibility standards. Bollard design shall adhere to the Texas Tudor theme by sticking with black finish and cast iron or equivalent material. Height may be dependent on the context of the location, with varying heights being acceptable in different places.

Planter boxes are also encouraged in the Urban Commerce area, and may feature trees, flowers or groundcovers, shrubbery, or any combination thereof. In order to compliment the Texas Tudor theme planters shall be black in color, and should be complementary in material to all other site furnishings. Planters may be located at regular intervals to break up the appearance of continuous pavement, demarcate paths, and beautify pedestrian corridors. Additional options include (but are not limited to) placing planters on either side of building entrances, creating a garden-like feel for an outdoor patio, and commercial screening.

This English setting incorporated landscape planters in addition to bollards. Planter bollards control pedestrian traffic while separating vehicular traffic.

The above planters are an acceptable example for the Mercer Crossing development.

This classic black receptacle is an ideal design for the Mercer Crossing development.

Lids as show above shall be placed on all trash and recycling receptacles to prevent rainfall from entering.

Trash receptacles should be placed regularly throughout the Urban Commerce districts as well as the open space areas. As with all other site amenities, trash receptacles should reinforce the Texas Tudor design theme; however, trash receptacles should be as inconspicuous as possible while still being visible enough to prevent littering. Trash receptacles should be within an arm's reach of a sidewalk or trail, but shall be located so as not to obstruct the natural flow of traffic.

Recycling receptacles are not required for Mercer Crossing, but are highly encouraged.

Although recycling is not required, it is highly encouraged. The lids shown are required on all provided receptacles.

If recycling receptacles are provided, then this double fixture is an ideal solution. All receptacles must be black in color and be fitted with a lid.

3.6 Trash Receptacles

As will all other site furnishing the bike racks shall be black in color. The architectural detail in the example above reinforces the Texas Tudor theme.

The above pet waste station or comparable substitution shall be spaced periodically throughout the development. Any site furnishing shall be in a black color finish.

Bike racks shall be installed at strategic points in open space and Urban Commerce districts. Racks shall be placed near trail-heads and at logical destination points, such as retail areas or water features. Bikes are encouraged as an alternative to cars, which in turn encourages interaction between the residents of Mercer Crossing. Any proposed bike racks shall adhere to the Texas Tudor theme and should be constructed of steel or another ornamental metal to prevent theft.

Pet waste stations may be placed in open space areas, preferably adjacent to trash receptacles. These stations should be spaced frequently to strongly incentivize pet owners to utilize this amenity as often as necessary. Leaving pet waste in open space areas or on trails and sidewalks should be strongly discouraged through signage. Pet waste bags should be stocked frequently enough to prevent running out of bags. Like trash receptacles, pet waste stations should be inconspicuous, practical, and should not detract from the Texas Tudor design theme.

The wooden beams of the above arbor imitate the half timbering used throughout England. This method of support shall be applied to all applicable shade structures.

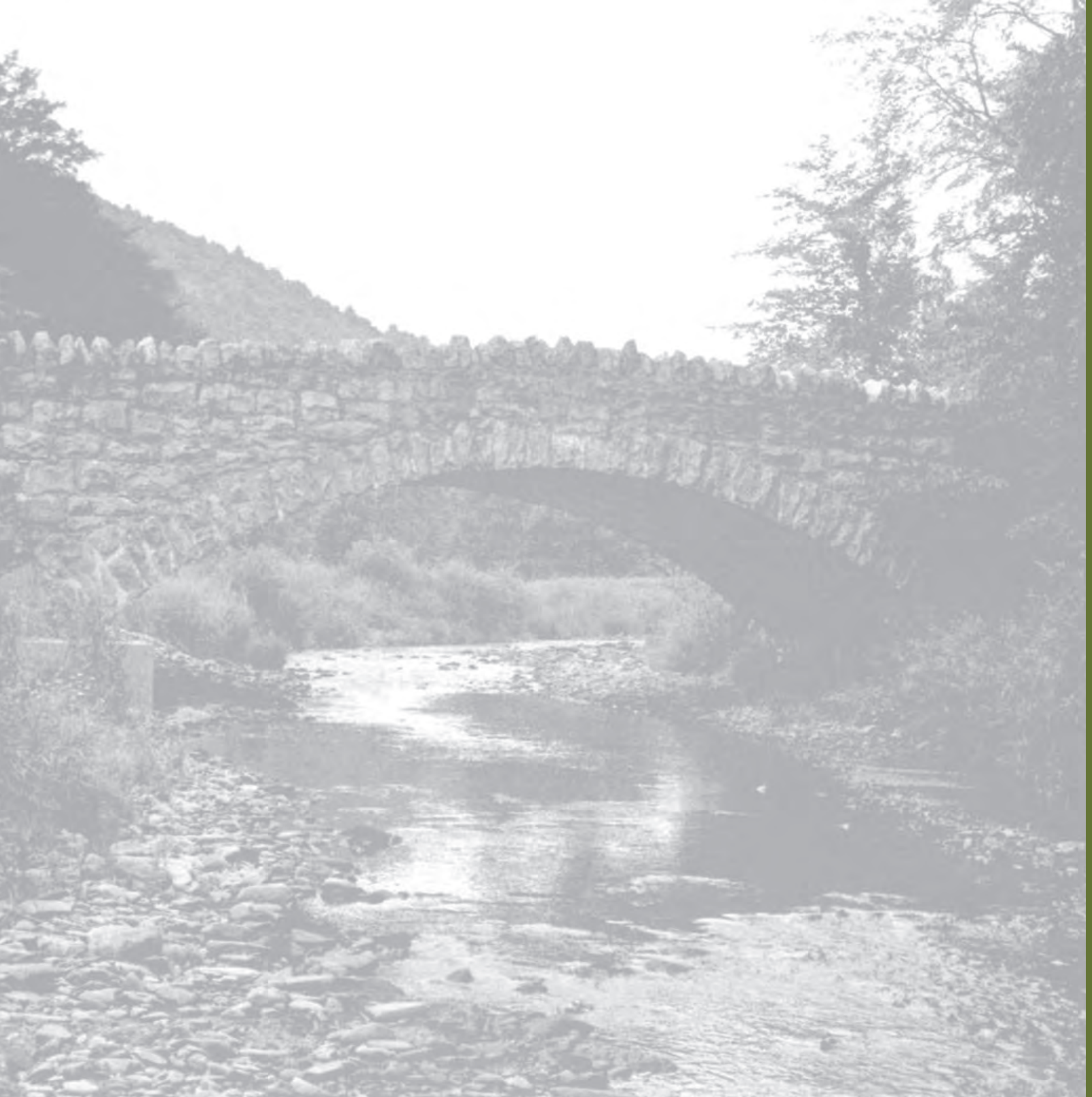
The stone work above is a great example of the desired Texas Tudor look.

This is another example of imitating the half timbering detail. As with this case, metal may be used to achieve the Texas Tudor theme.

The combination of stone columns and wooden beams is a true Texas look. With the addition of half timbering support this would be the most ideal option of shade structure.

Shade structures are an integral part of public open space. They can function as gathering places for the community, provide respite from the Texas summers, and serve as aesthetically pleasing improvements to open space. Shade structures in Mercer Crossing may include (but are not limited): pergolas, arbors, gazebos, pavilions, and covered porches. These shade structures may or may not feature amenities such as grills, picnic areas, and enhanced landscape. The design of these structures should reflect the Texas Tudor theme and enhance the visual appearance of open space lots. Elements such as stone columns, wooden support beams, and natural-looking roofs reminiscent of rural English cottages are encouraged.

3.9 Amenity Center



Section 4
Signage

4.1 Sign Locations

4.2 Ground Signs

4.3 Commercial Building Signs

Ground signage within Mercer Crossing shall be consistent and compatible with the overall theme for the project. The location of ground signs for Mercer Crossing shall be located in the general areas as indicated on the Ground Sign Locations Map. The different types of ground signs are community monumentation, commercial and residential. Community monumentation signs are to identify the Mercer Crossing community. Commercial Ground Signs will identify the different commercial tenants and retail centers along major streets. The Residential Ground Signs will distinguish the different neighborhoods at street entrances.

There a total of five categories of ground signs within Mercer Crossing. This section includes a list of those categories with a description of the sign purpose and requirements.

Type

1 Large Community Monumentation

2 Commercial Tower/Pylons

3 Small Community Monumentation

4 Commercial Ground signs

5 Neighborhood Entrance Signs

4.1 Sign Locations

This inspirational photo and sketch are to serve as merely an idea, and may be interpreted to fit the specific needs for Mercer Crossing.

Purpose

This type of sign will be located along Interstate 635 to identify the overall development. This will promote visibility and provide an identity along the highway to passing motorists. It will give Mercer Crossing a distinct presence along the highway.

Requirements

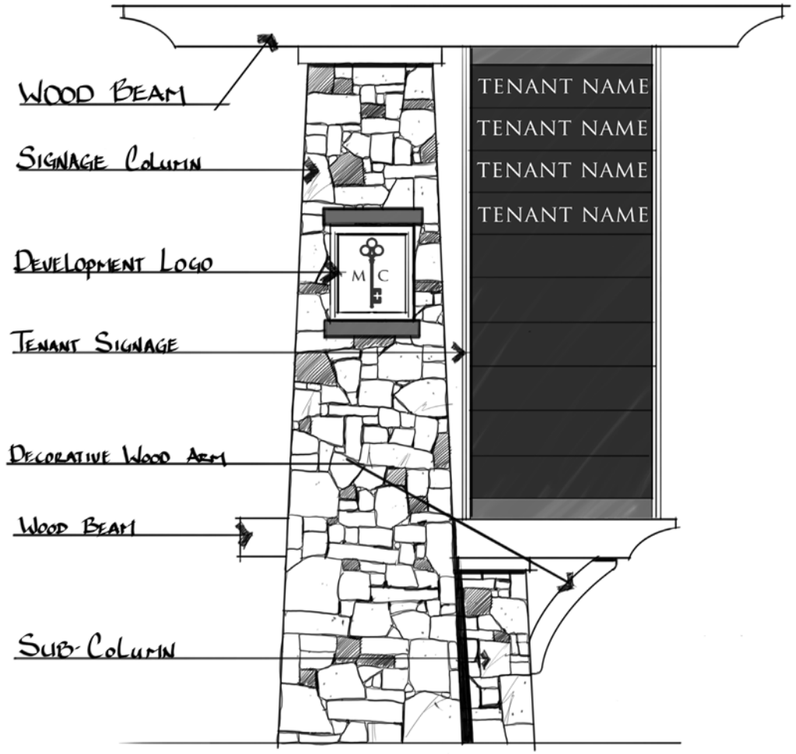
•The developer may choose to do a tall tower sign or a lower ground sign.

•If a tower sign is proposed, it must be a tower feature consisting of same architectural style of the development and not exceeding 70′ in height.

•If a lower ground sign is proposed, it shall also consist of the same architectural style of the development.

•Either sign type shall only be used to identify Mercer Crossing and may not be used as a commerce sign to promote a business.

•The sign shall be maintained by the Property Owner's Association.



Purpose

These types of signs shall be used to identify the commercial/ retail centers of the community along Valley View Lane and Interstate 635 to passing motorists in order to promote business and create a distinct commercial or shopping district.

Requirements

•The signs shall be a tower feature or pylon structure with similar materials that are complimentary to the community theme. Architectural elements, such as a roof element, may be used to reinforce the design theme.

•The signs shall be used for multi-tenant identification of the businesses within the commercial areas.

•The multi-tenant panels shall be white text/business logos and a black background. They shall be internally illuminated.

•Enhanced landscaping is required surrounding the sign structure.

•Each commercial area as shown on the Land Use Plan shall be allowed one tower/pylon sign.

•The maximum sign height shall be 40′.

•The signs may include the name of the shopping center. For example, The Shoppes at Mercer Crossing.

•The sign shall be maintained by the Property Owner's Association.

Purpose

These types of signs will be used to identify Mercer Crossing at thoroughfare intersections. These signs will enhance the project identity along adjacent roadways so reinforce the community theme and create a distinct district.

Requirements

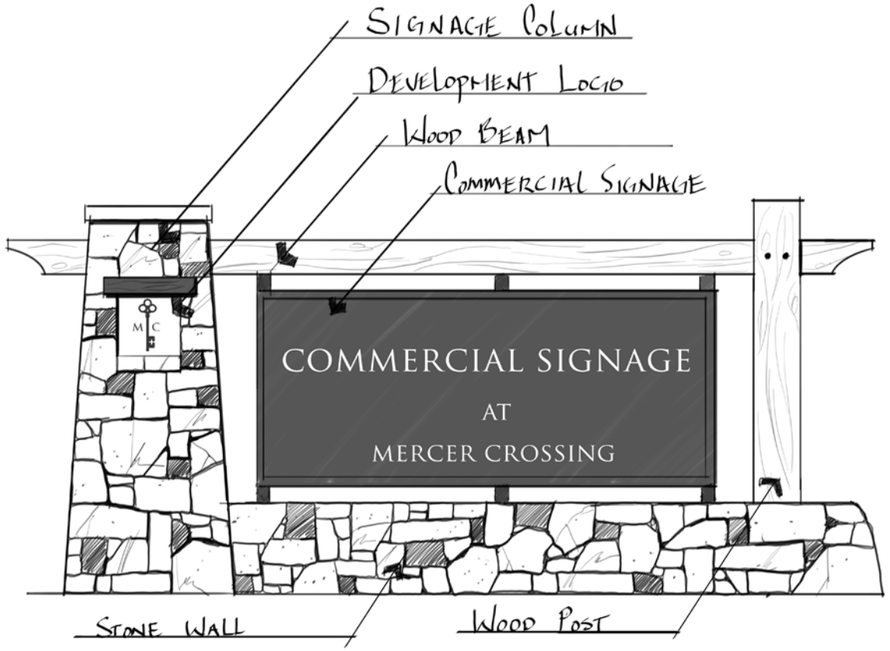
•These signs shall be free standing and not constructed within or part of a screening wall.

•The sign materials shall be consistent with the overall community theme and shall compliment the project.

•Enhanced landscaping surrounding the signs is encouraged to bolster the community theme.

•The sign shall be maintained by the Property Owner's Association.

•Either sign type shall only be used to identify Mercer Crossing and may not be used as a commerce sign to promote a business.



Purpose

These types of signs may be used in addition to the Commercial Tower/Pylon Signs within the commercial areas to identify additional businesses and restaurants that are not included in the Commercial Tower/Pylon Signs. These signs will help motorists navigate to their destinations and establish a presence along the collector thoroughfares which is vital to the success of retail and restaurant businesses.

Requirements

•The signs may be as multi-tenant or to identify individual businesses.

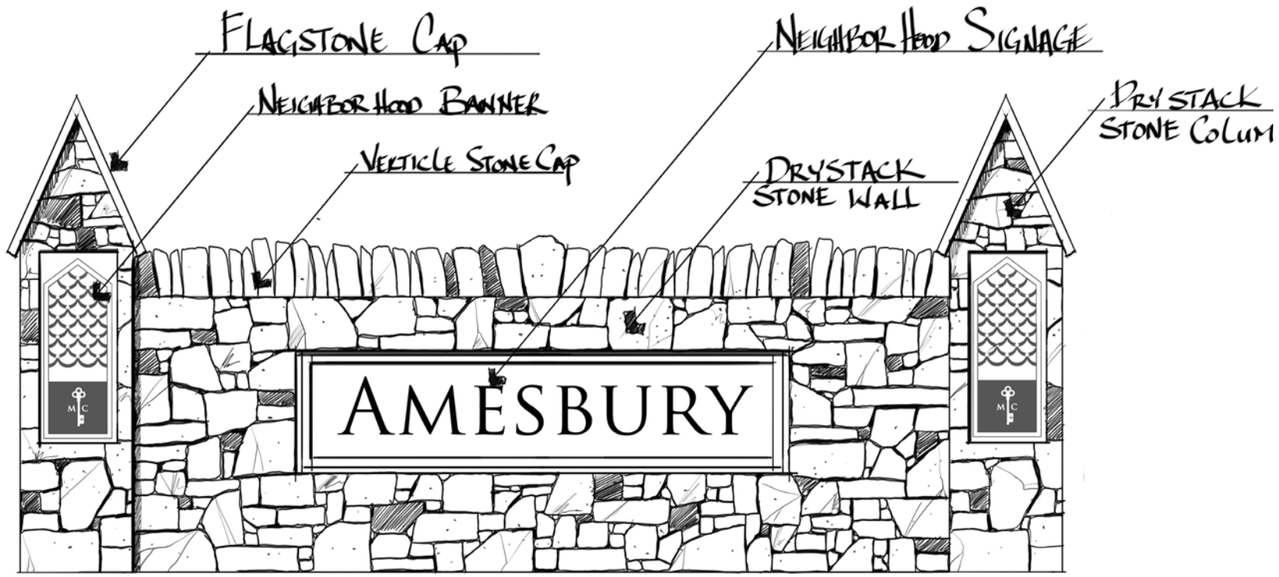
•These signs shall use the same material as the tower/pylon signs to reinforce the sense of a distinct retail district.

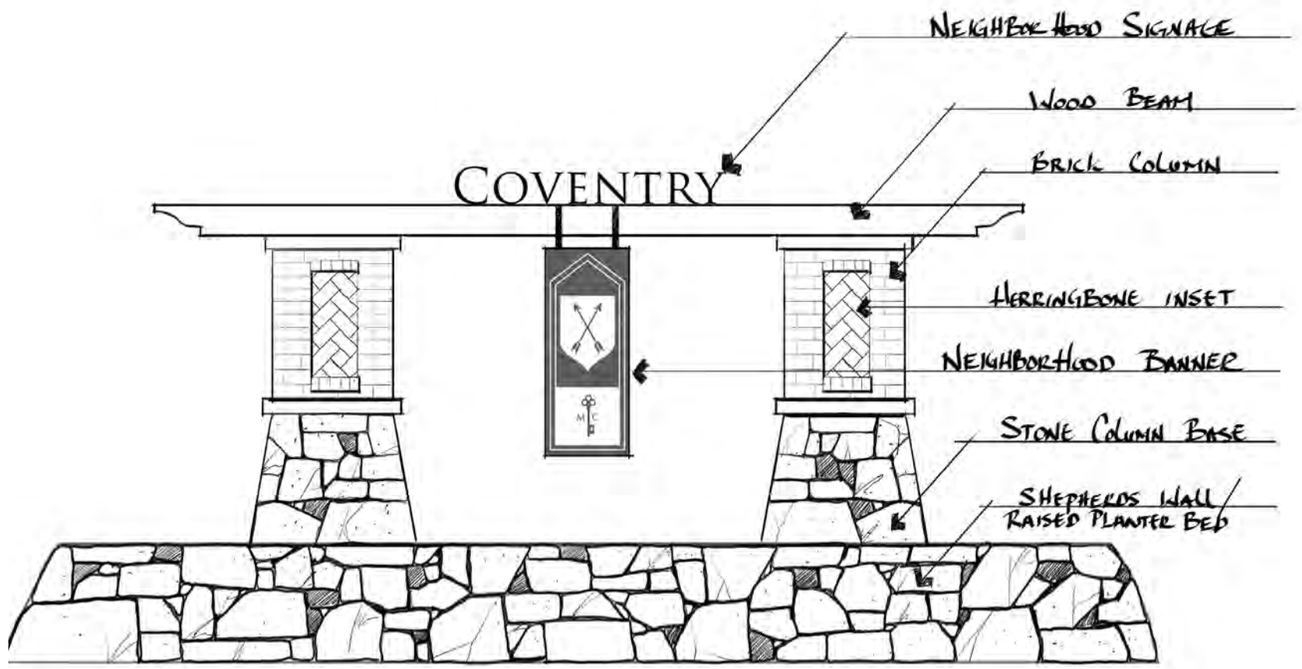
•The sign panels shall include the business names or logo in white with a black background.

•The signs may be internally or externally illuminated.
•The maximum height shall be 10'.

•The signs may include the name of the shopping center. For example, The Shoppes at Mercer Crossing.

•Multi-tenant ground signs shall be maintained by the Property Owner's Association.



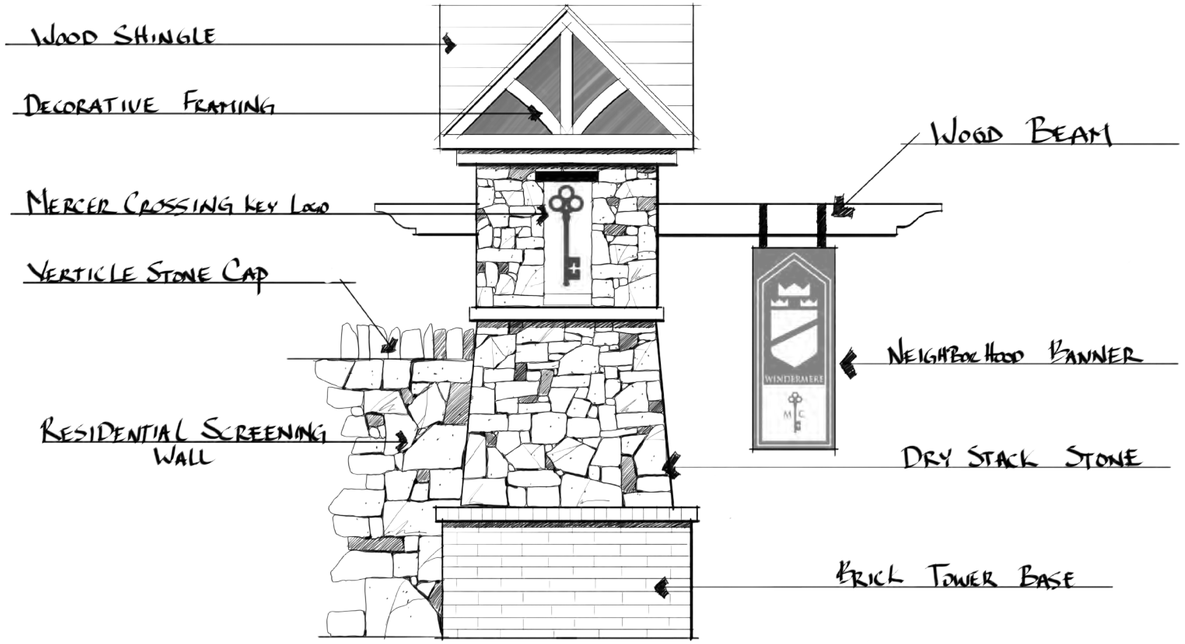


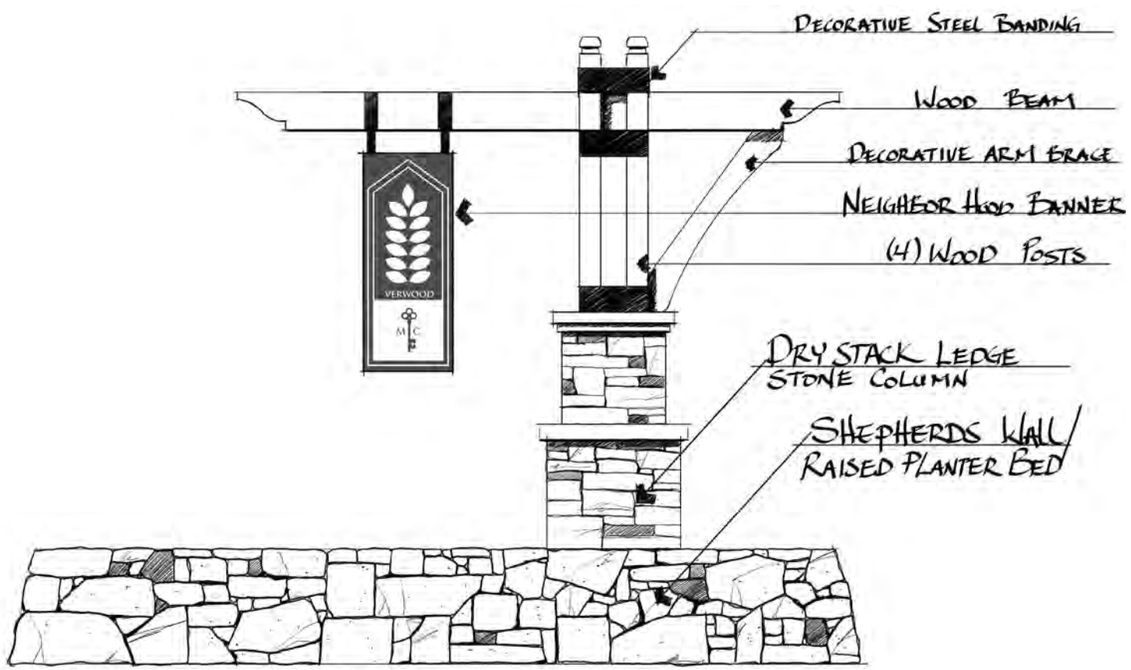
Purpose

These types of signs shall be used to identify each neighborhood to reinforce the sense of community. Each neighborhood will be clearly identifiable from the collector streets for easier navigation. While each neighborhood is part of the larger cohesive development, they are also maintaining a distinct identity.

Requirements

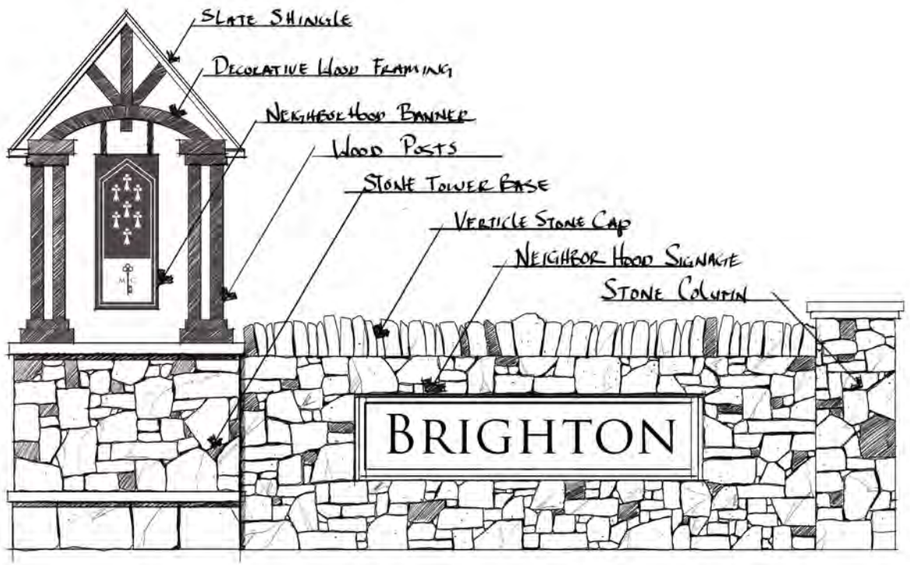
- The signs may be free standing or as part of the screening wall.
- They may include architectural elements consistent with the development theme. Material selection shall be complimentary to the neighborhood look and feel.
- Signs shall include the neighborhood name, banner, and an identifier of Mercer Crossing by the use of either the development logo or development name.
- Each neighborhood shall have a different look for their entrance signs. No two neighborhoods shall have the same entrance sign design.
- The sign shall be maintained by the Homeowner's Association.
- The actual design of the neighborhood entrance signs shall be included in the Detailed Site Plan. Please refer to those documents for specific design information.

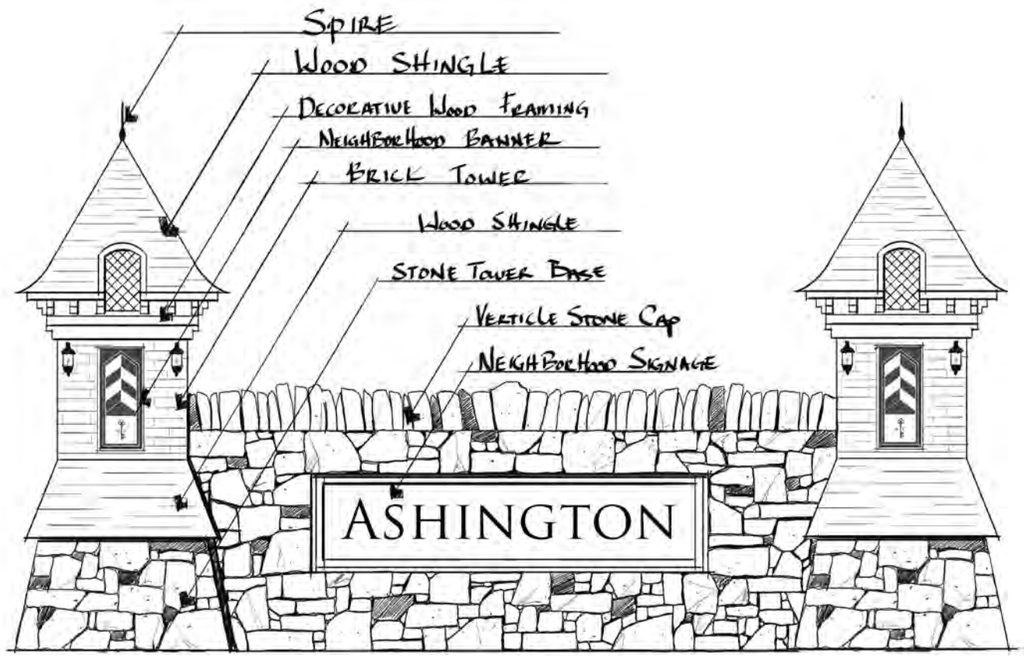




4.2 Ground Signs

Type 5: Neighborhood Entrances





4.2 Ground Signs

Type 5: Neighborhood Entrances

Purpose

Wayfinding signs help pedestrians and motorist choose a path in a built environment. These signs are especially helpful in multi-building centers, master planned communities, and parks. They typically include the name of a feature or tenant with an arrow pointing in the direction in which it can be found. These signs help reinforce a distinct district and the community identity.

Requirements

- All wayfinding signs used throughout Mercer Crossing shall be uniform and use consistent colors and typeface.
- These signs may be located on light poles, street signs, freestanding, or attached to buildings.
- Pedestrian kiosks may be used.
- These signs may also include park, trail, and bike path identification.
- These signs may be located at intersections of pedestrian paths, driveways, street intersections, or access drives.
- All signs shall include the Mercer Crossing logo, name, or other branding that identifies the Mercer Crossing community.

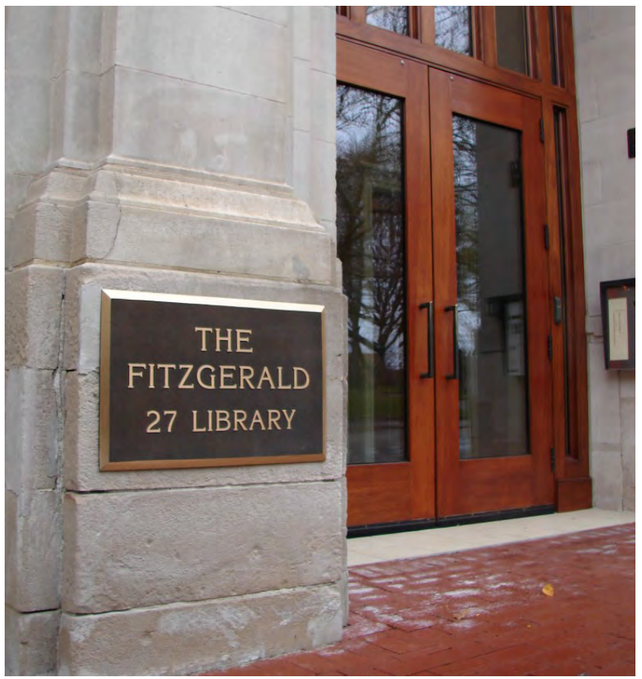
The purpose of these guidelines for Commercial Signs is to allow for flexibility and variety in the types of building signs within the commercial areas of Mercer Crossing. The types of building signs may vary from one business to another, but the theme of Mercer Crossing shall be reinforced and complimented by the signs. Signs shall be appropriately scaled to the pedestrian or motorists, where applicable.

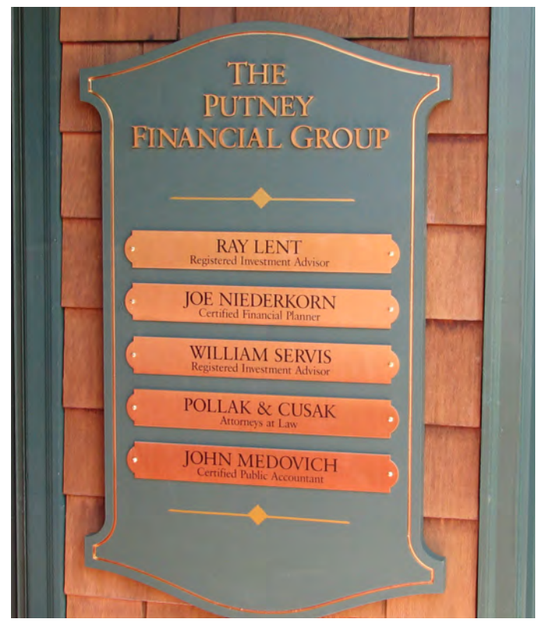
The different types of commercial signs shall include the following categories:

1. Directory Sign
2. Awning/Canopy Sign
3. Hanging Sign
4. Window Sign
5. Blade Sign
6. Banner Sign
7. Wall Sign

The following commercial signs are prohibited:

1. Electronic/Digital Signs
2. Roof and Painted Building Facade Signs
3. Billboards
4. Off-Premise Signs
5. Pole Signs





Purpose

A directory sign identifies various tenants within a building for patrons to navigate to their destination.

Requirements

- The sign may be located on the exterior of the building, preferably at entrances, with one sign on each street frontage.
- The building that the directory sign is used shall be a multi-tenant interior access building.
- The sign shall be attached to the building wall.
- The sign shall be externally illuminated.

Purpose

These signs shall identify the business for which they are used. Canopies or Awnings are usually placed over windows or doorways to create a distinct entry.

Requirements

•The awning lettering may only be located on the vertical hanging fabric with 6″ letter height.

•Canopy lettering shall be attached above the canopy structure or within the face of the canopy structure. In each instance, the lettering shall not exceed 18″ in height.

•The signs may be internally or externally illuminated.

Hanging Signs

Purpose

Hanging signs facilitate pedestrian navigation along storefront walkways and entrances. These signs embody the community theme and provide architectural interest to buildings.

Requirements

- The signs may be suspended from above underneath a canopy or ceiling.
- The signs shall be located at building entrances or a corner of the building where two or more sidewalks come together.
- The sign area of a hanging sign may be 16 square feet per face for a one story building or forty square feet per face for a building of two stories or more.
- Lettering shall be 18″.
- The signs may be internally or externally illuminated.

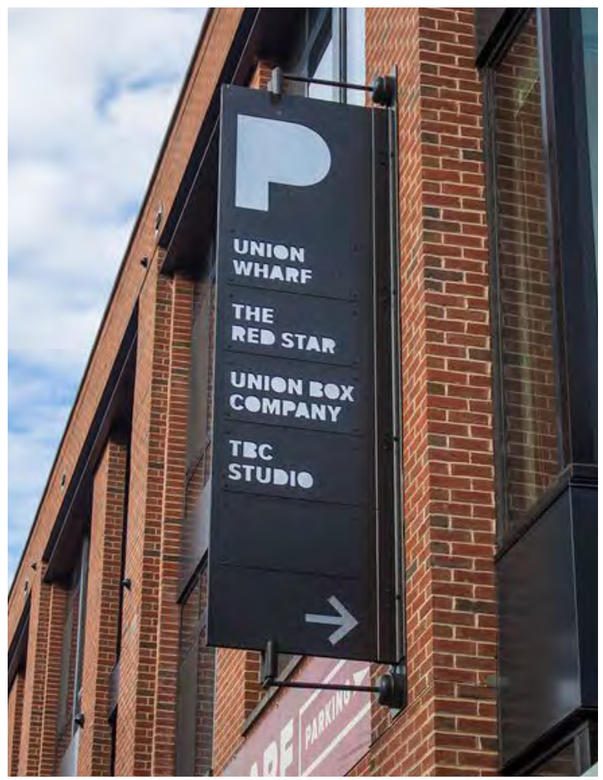
Window Signs

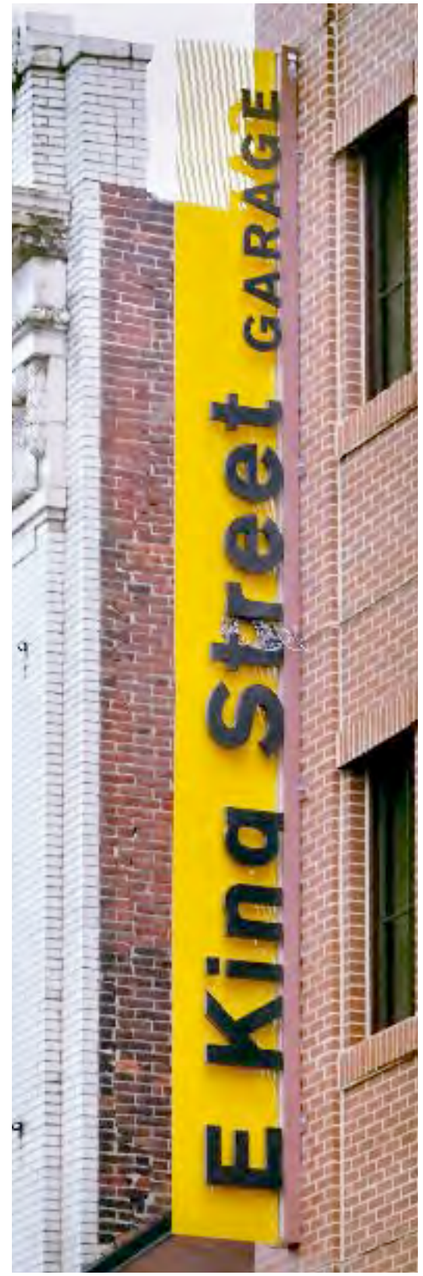
Purpose

Window signs are used in storefront windows to attract business from the street. They can also be used in a multi-story building to identify the tenants on the upper floors.

Requirements

- Window signs may be permanent signs or temporary.
- These sign area shall be limited to a maximum of 40% of the glass area per opening.



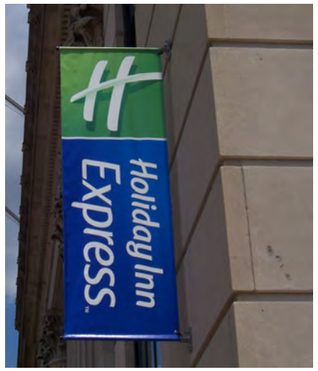


Purpose

A blade sign is similar to a hanging sign that is perpendicularly attached to the exterior wall of a building. This sign also provides architectural interest to the building.

Requirements

- There may be one blade sign per street frontage.
- The signs shall be internally illuminated. Either the whole sign case may be internally illuminated or the lettering may be individually internally illuminated channel letters.
- The maximum sign lettering shall be 18″.



Purpose

Banner signs are typically temporary and used to identify events or tenants within the commercial areas.

Requirements

•Banner signs shall be made of suitable material to withstand weather.

•There shall be prints/letters/images on both sides of the banner sign.

•Banner signs may be attached to light poles and buildings.

•These signs shall be supported by projecting poles at the top and bottom of the sign to withstand movement caused by wind.

•Banner signs shall not be illuminated.

•The sign face area for banner signs shall not exceed 16 square feet.

Purpose

Wall signs are mounted to the exterior of the building and used to identify a tenant. Wall signs may also be used as building identification such as building name, building number, or street address.

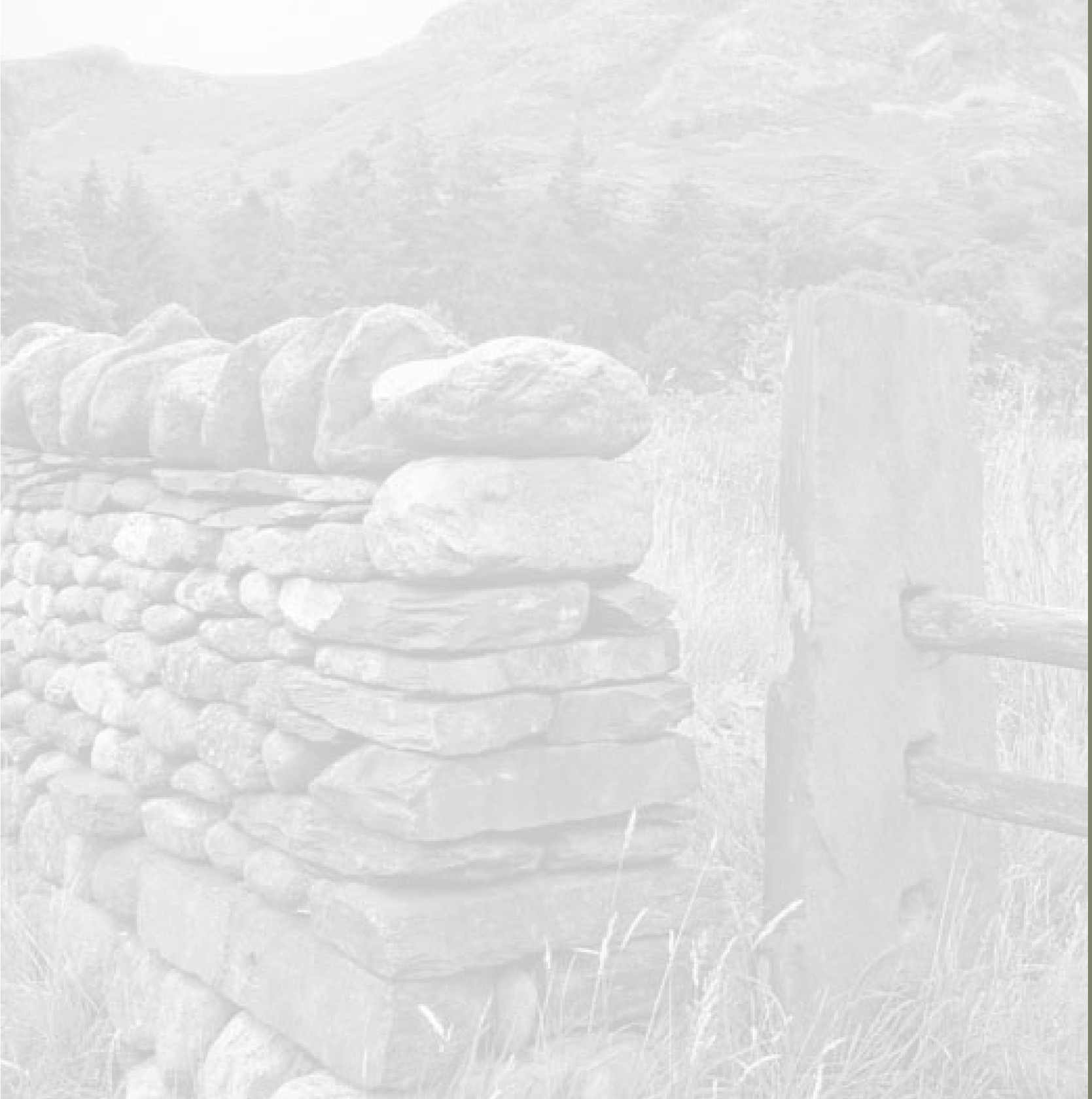
Requirements

•Building identification wall signs shall be used to identify buildings in a multi-building complex or a single building with multi-tenant interior access only.

•There may be one building identification wall sign on each street frontage.

•Wall signs that are not used for building identification shall be used to identify a business or tenant and may have one sign per street frontage, except for multi-tenant exterior access buildings may have one sign per tenant.

•Walls signs, including Building Identification Wall Signs, shall be internally or externally illuminated.



Section 5
Open Spaces, Parks & Trails

5.1 Historical Inspiration

5.2 Open Space Plan

5.3 Parks, Recreational Facilities & Open Space

Historically English Landscapes took a minimalistic approach. Green rolling lawns that focused in on a key water feature. Clumps of trees were strategically planted to create a wooded backdrop and beautiful naturalistic views. These elements shall be applied in large open spaces and in the trail systems connecting each neighborhood.

At the neighborhood level residences will follow the traditional English country garden look with a generous mix of perennials, flowering shrubs and ornamentals. Layering plants creates a complex plant community and provides color and texture year around. Please refer to the appendix for a complete look at the plant selections. This planting method shall be applied at the residential scale, near entry signage, and intimate commercial settings.

This open space plan indicates the locations of parks, recreational trails, linear parks, multi-family open space, and the Valwood open space. All areas shown will be vegetated using the plant list found in the appendix and shall follow the English country garden theme previously discussed.

Open Plazas like shown above provide gathering space and for building tenants and the general public. This concept will be applied in the commercial districts.

Grassy lawns not only fit the English garden theme, but are also very versatile. All parks throughout Mercer Crossing shall have open lawns.

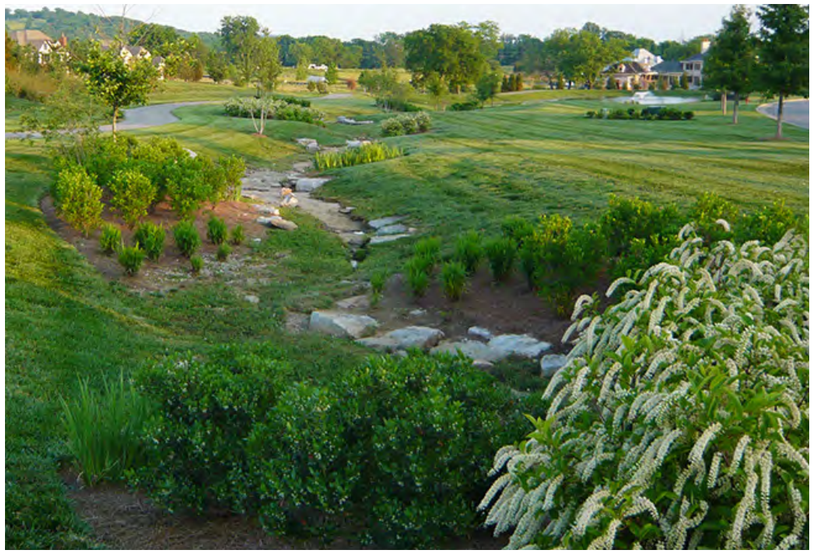
Parks and open space are key components of healthy communities. Each residential neighborhood should include at least one common open space, and urban commerce areas should feature green space and open plazas wherever possible. The landscape design should be inspired by the country gardens and open landscapes of old England, while featuring native plant species that will require less water and are suited for the North Texas climate. A complete list of plants can be found in the appendix.

The above paving pattern mimics the formal gardens of England and can be applied to any pocket park within the recreational areas.

Natural elements like above allow children to explore nature and use their imagination. These rocks could even be arranged in the classic Stone Henge formation to reinforce the English design.

Lush green lawns serve various purposes when it comes to recreation. In the photo above you have the green lawn along with a linear trail, an adequate shade canopy, and seating. This concept with be applied in the area indicated on the map to the right.

Linear parks are sometimes made of oddly shaped pieces of land, much like the vacant lots and city easements that link to become neighborhood parks. These parks are also used to form greenbelts that provide a continuous green connection throughout the city. The intended use is classified as low intensity recreation, which emphasizes the open space concept and allows for preservation of natural habitat. Manicured green lawns and clumps of dense wooded areas shall mimic the traditional English Landscape. Any site furnishings will mirror those uniquely selected for the Mercer Crossing development.



Drainage areas within the linear park may be treated as bio-swales and be covered in vegetation like the concept shown above.

Covered pavilions protect visitors from the elements and encourage outdoor gatherings. The above photograph is merely showing the concept that shall be applied where space allows.

The Valwood open space should embrace the natural topography of the land and should be used for passive recreational purposes. A trail shall be built around the water feature/pond to provide access for residents. The Valwood open space should encourage the natural wildlife habitats of birds, aquatic life and small mammals, and create an environment for residents and their visitors to interact with and enjoy nature. Catch and release fishing may be permitted at the pond.

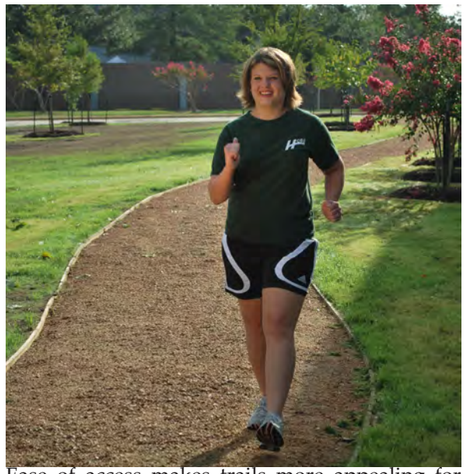
In order to promote the natural habitat and prevent excessive runoff, permeable paving should be used in the Valwood area.

The above images are examples of the wildlife-human interaction intended. The wetland area should be a place for residents to spend time outdoors and enjoy interacting and viewing all aspects of nature. In order to preserve wildlife habitat the incorporation of a boardwalk may be considered.

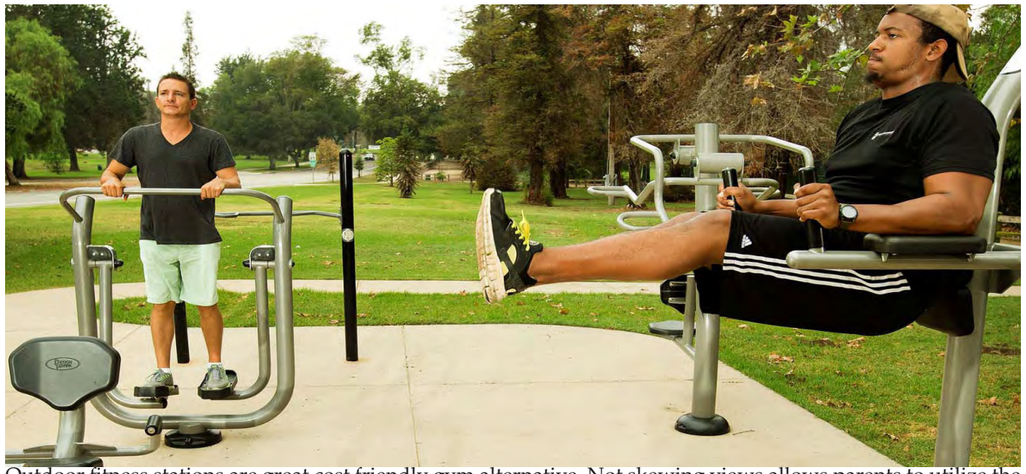
Bike friendly trails are fun for the entire family. Implementing safe crosswalks and lower speed limits increases safety and encourages families from near by neighborhoods to use the trails

Parks and open space should provide connectivity between different areas and neighborhoods. Pedestrian pathways and trails shall be located in open space areas, which encourages pedestrian activity and allows residents to access commerce areas without having to drive. Trails and pathways shall be constructed of concrete per City ordinance, and to facilitate bicycle, stroller, and ADA accessibility. Outdoor fitness stations may be constructed adjacent to trails in open space areas. The trails and walkways in Mercer Crossing should encourage safe pedestrian activity, community integration, and healthy lifestyles amongst its residents.

In addition to providing connectivity within the Mercer Crossing development, a signaled crosswalk shall be installed at the intersection of Valley View Lane and Mercer Parkway to allow safe access across the highway.



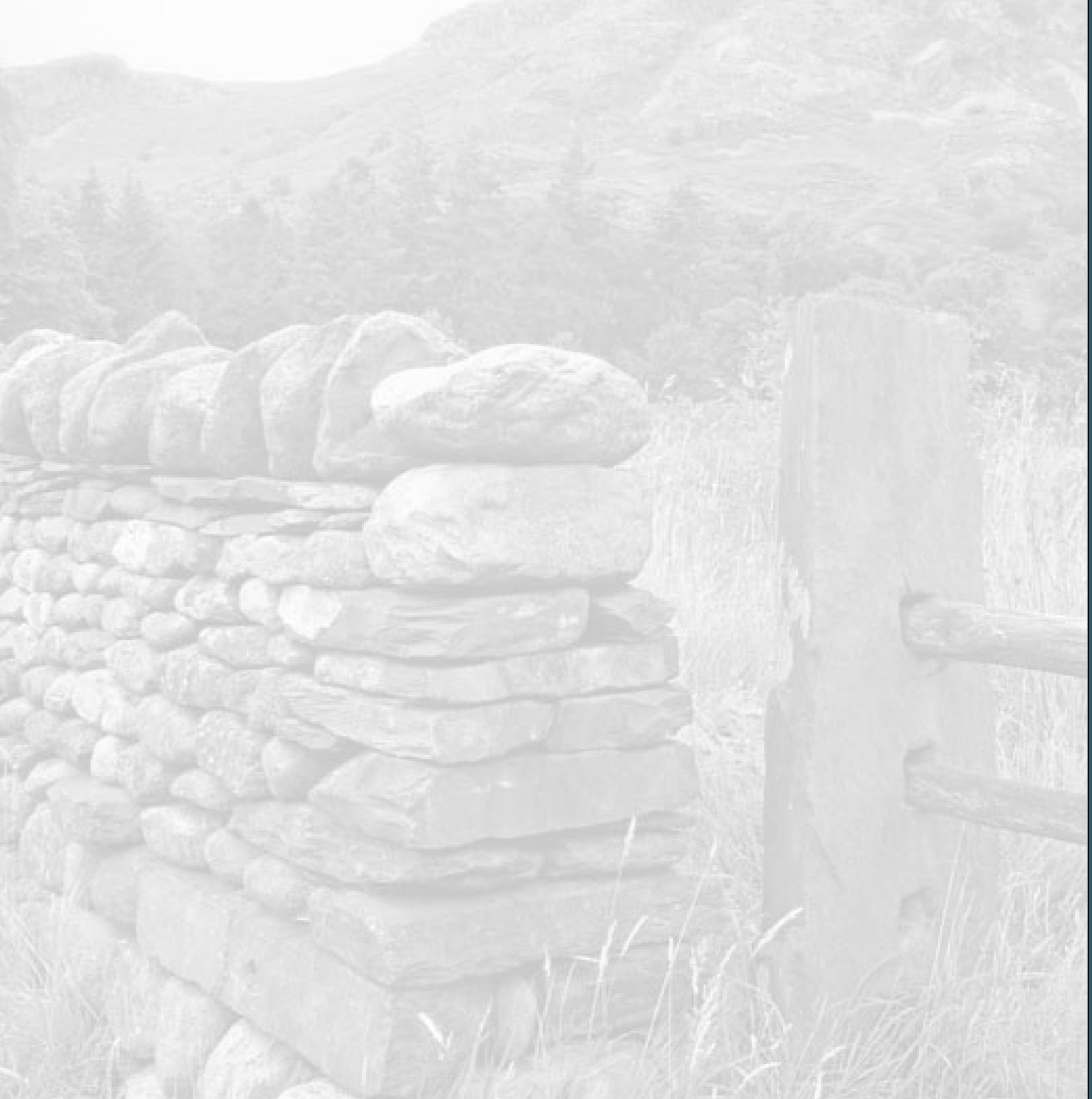
Ease of access makes trails more appealing for residents.



Outdoor fitness stations are great cost friendly gym alternative. Not skewing views allows parents to utilize the equipment while children play near by.

Multi-family developments shall preserve a minimum of ten percent of the total lot area for parks and open space. Landscaped walkways, yards, and entries shall be considered open space; however, dog parks, playgrounds, passive open space areas, gazebos and picnic tables, and grill/outdoor amenity areas are also acceptable uses for multi-family open spaces. These developments shall make all efforts to include pedestrian trail connections throughout the multi-family community linking these residents with the other neighborhoods within Mercer Crossing.

The Texas Tudor theme shall be carried throughout the multi-family community. All planting beds should following the English country garden theme, with layers of various colors and textures. All stone used shall coordinate with the selections unique to Mercer Crossing. The images to the left are examples of amenities that may be incorporated into the multi-family development.



Section 7
Urban Commerce District

7.1 Introduction

7.2 Architectural Standards

7.3 Site Development Standards

Although the architectural look of this retail center is not what we are going for, the concept is. An open plaza area allows the continued flow of pedestrian traffic and the space for landscaping.

This commercial facade shows a variation in roof pitch and building material to create a Tudor style village. This concept shall be applied to all commercial areas using materials found in the appendix.

This lively, urban concept should be applied in the mixed use areas, specifically the Boardwalk South of I 635. Providing multiple uses to an area utilizes the space to its full potential. Here you can see people relaxing, space for children to play, restaurants, and retail.

The Urban Commerce District for Mercer Crossing makes up nearly 35% of the community's land area. It allows for a mixture of land uses such as retail, office, hospitality, institution, senior living, and high density multi-family residential. The areas designated for this district are located at major street intersections and on the periphery of the Mercer Crossing community, as shown on the Land Use Plan.

The type of development planned for this District can include small, single lot, one purpose buildings up to larger retail power/shopping centers. Small scale retail, mixed use buildings, corporate offices and multi-family buildings can also be included to evoke a village-like feeling within the District. These uses should be compatible and promote interaction with one another where appropriate. Particular attention should be given to the front building facade to complement the streetscape and help create an active street scene. Pedestrian and vehicle circulation patterns should be efficient and provide increased mobility from open space and parking areas. The use of site elements and amenities shall be compatible to the design theme to evoke a sense of unity.

Buildings within the Urban Commerce District shall be architecturally compatible with the Texas Tudor design theme. Facades should be finished on each side of the building, using elements such as articulation, detailing, and other architectural features. The building plane should be articulated horizontally and/or vertically to avoid long expanses of exterior wall. Articulating roof lines can also help soften long building edges. Buildings should include architectural elements such as cornices, awnings or canopies, lintels, columns, porticoes, colonnades, or balconies. These elements can unify separate parts of the building, make the building human scaled, and provide a backdrop for building signage or graphics.

A tri-partite design shall be used on larger buildings within the Urban Commerce District to help break up the wall plane. The buildings shall have a distinct base, middle, and top, and each of these sections should have different facade materials. Smaller buildings that are located on individual pad sites or are not part of a larger building complex shall be architecturally compatible with the larger development.

All of the facades shown to the left demonstrate the character needed to portray the Texas Tudor theme. The roof variations, architectural details and materials work together to create an upscale retail center.

Materials for Urban Commerce buildings shall be predominately masonry, which includes a combination of brick and stone. A variety of brick and stone patterns can be incorporated into each facade to create architectural interest and also be complementary to the design theme. Soldier course and herringbone are just a couple of brick patterns that may be used on facades. A variety of stone patterns, such as splitface, rectilinear, or stacked stone can also be used to enhance the architectural style. Large stone blocks, such as cast stone and limestone, can be used at the base of a building. A combination of these materials shall make up at least 75% of the facade area.

Secondary materials may include smooth finished stucco and Hardi-plank. These materials may constitute a maximum of 25% of the facade, provided that the Hardi-plank is configured as horizontal lap siding. The complete list of exterior paint options is located in the appendix. These options or approved substitution range from lighter Earth tones to deeper jewel tones and all must reinforce the Texas Tudor theme.

Accent materials can make up 5% of the facade and may include a variety of materials for architectural elements such as trim, soffits, eaves, beams, lintels, shutters, and cornices. Materials may include pre-cast masonry, gypsum reinforced fiber concrete, metal, split-faced CMU block, and EIFS. Wood or faux wood may also be used as an accent material on up to 25% of the building facade to accentuate the Texas Tudor theme.

Windows are an important architectural feature and particular attention should be given to the placement of windows on a facade. For store fronts and shops, windows allow interaction with the street and pedestrian spaces. The placement of windows, along with the size and type, help establish the scale vitality of the public realm.

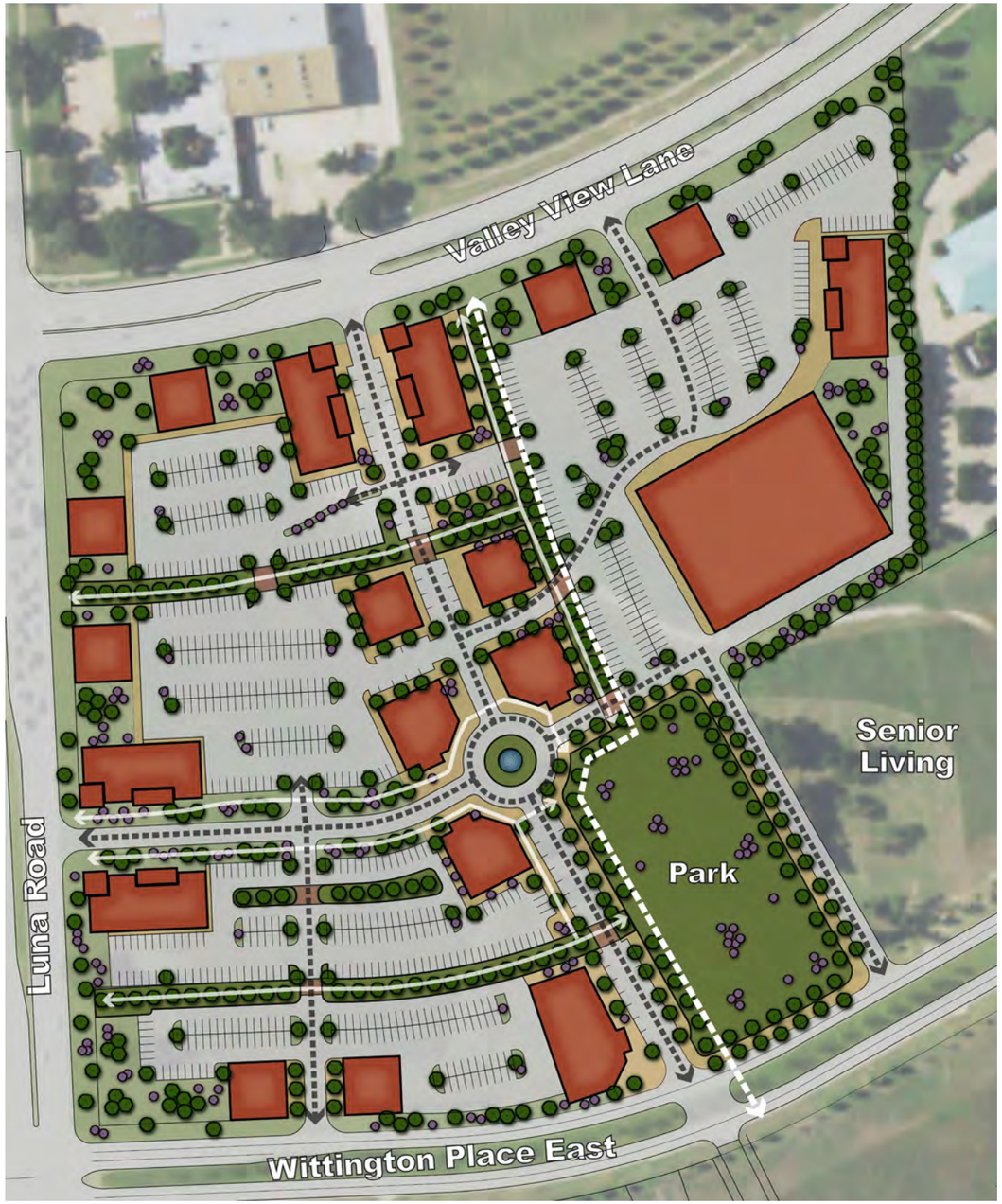
Building entrances shall be human-scaled and clearly identifiable to pedestrians and motorists. The use of awnings, canopies, porticoes and other sheltered entry elements should be used to enhance the entrance and provide protection. Other features may include lintels, pediments, columns, overhangs, railings, or balustrades.

The use of awnings and canopies emphasizes the human-scaled design of the buildings, and gives the detail needed for portraying the Texas Tudor theme. Materials that may be used for awning and canopies are metal, fabric, vinyl, acrylic, or fiber-glass provided that they are opaque and not shiny or reflective. Any support structure that is used for awnings or canopies should complement the style of architecture and materials used on the building.

Awnings and canopies are allowed over windows or doors provided that they do not encroach onto a pedestrian pathway or street space. They cannot be internally illuminated. All color choices and materials must follow those provided in the appendix section.

Commercial roofs may be pitched or flat with parapets and shall be complementary to the design theme. Vertical articulation, which includes articulating roof lines, is encouraged to minimize long stretches of facade. The use of parapets is also helpful in screening rooftop equipment and to provide an area for a building sign. Parapets may include cornices and other trim elements to distinguish the top of a building.

The materials of roofs shall be a combination of asphalt shingles, tile (clay or concrete), or metal standing seam. Flat roofs with parapets shall have a monolithic Thermoplastic Polydefin (TPO) membrane that is not visible from the ground. Roof materials for awnings, canopies, and other elements that are used to create arcades along storefronts shall be shingle, metal, slate, or tile.



The site layout for each area within the Urban Commerce District shall be an integrated design approach that takes into consideration the surrounding roadways and proposed neighborhoods while ensuring pedestrian connectivity to the community's trail and open space system. Visibility and accessibility are key components that are vital to the success of restaurants, retail, and shopping areas. Particular attention should be given to these components during the site design process for commercial areas.

This conceptual site configuration proposes interior parking blocks. Providing for several outparcels or pad sites for individual buildings in front of a large anchor or shopping center.

Elements that should be considered include maximizing views in open space and designing the site to overlook water features. These components are community amenities and provide an added value to the commercial areas. The inclusion of plazas and outdoor dining opportunities increases human interaction with the public realm and is strongly encouraged where appropriate.

The Urban Commerce District may utilize a shared parking design approach for off peak uses in order to minimize over-parking scenarios and to reduce impervious areas. The majority of surface parking is required to be located behind the buildings in order to create a consistent street edge. Surface parking area shall include landscape islands and borders to create shade and aesthetic balance will paved areas. Both on street, and off, street parking are allowed.

The images to the left indicate a properly landscape parking lot. Parking islands should be treated as bio-swales in order to filter runoff and for aesthetic value. These areas are ideal places to incorporate the English country garden theme with layers of colors and textures. Please refer to the appendix for a complete plant list.

Pedestrian connectivity between parking islands shall be taken into consideration throughout all parking areas. Pedestrian arteries shall lead directly to their destination without any conflict with moving vehicles, except for crosswalks to access storefronts.

Parking structures may be necessary to accommodate a higher parking demand. If necessary, the structure shall be architecturally compatible with the surrounding buildings. Street level areas of a parking structure may include some ground floor retail or office uses to promote an active street scene.

Landscaping for the Urban Commerce District shall include a wide variety of plants, trees, and shrubs that are consistent with the Texas Tudor design theme. While the different street types for Mercer Crossing require street trees along the parkway, the use of landscape buffers may be appropriate if the buildings are not located directly on the street edge. To promote an organic feel, lifestyle shopping is encouraged. This type of area should include wide walkways broken up with landscape planters and beds.

Parking lot landscaping is important to soften the views of large expanses of concrete and to provide shade and relief from the sun. Screening shrubs shall be used where parking lots abut a street to block any unwanted views. Landscaped islands with at least one tree shall be located at the end of rows of parking. In addition, a landscaped island is required for every 15 spaces located within a parking row. When appropriate, raised planters may be needed to protect a landscape island.

Foundation landscaping is encouraged along the facade of large buildings to help soften the architecture and to enhance the look and feel. The use of either landscaped beds or planters is appropriate.

Fencing

Areas of the Urban Commerce District that are directly adjacent to residential neighborhoods should be screened by a combination of stone or masonry wall. For a complete list of approved color options visit the appendix.

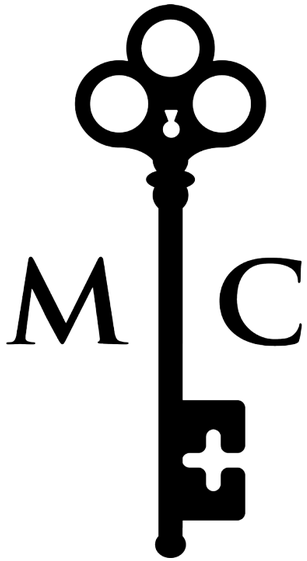
Service areas, such as dumpsters, shall be screened by a fence or wall of a maximum of 8′ in height to minimize visibility.

Retaining Walls

The use of retaining walls may be necessary for grading purposes. If retaining walls are use, they shall be clad in a material that is consistent with the overall design theme.

This fencing plan indicates the location of a six foot masonry fence that is used as a partition between residential and commercial areas. It will also be used along all major streets as an aesthetic screen for residential areas

Fence must be constructed of stone, masonry, or a combination of the two. Patterns and color selections can be found in the appendix.



Volume 2: Pattern Book

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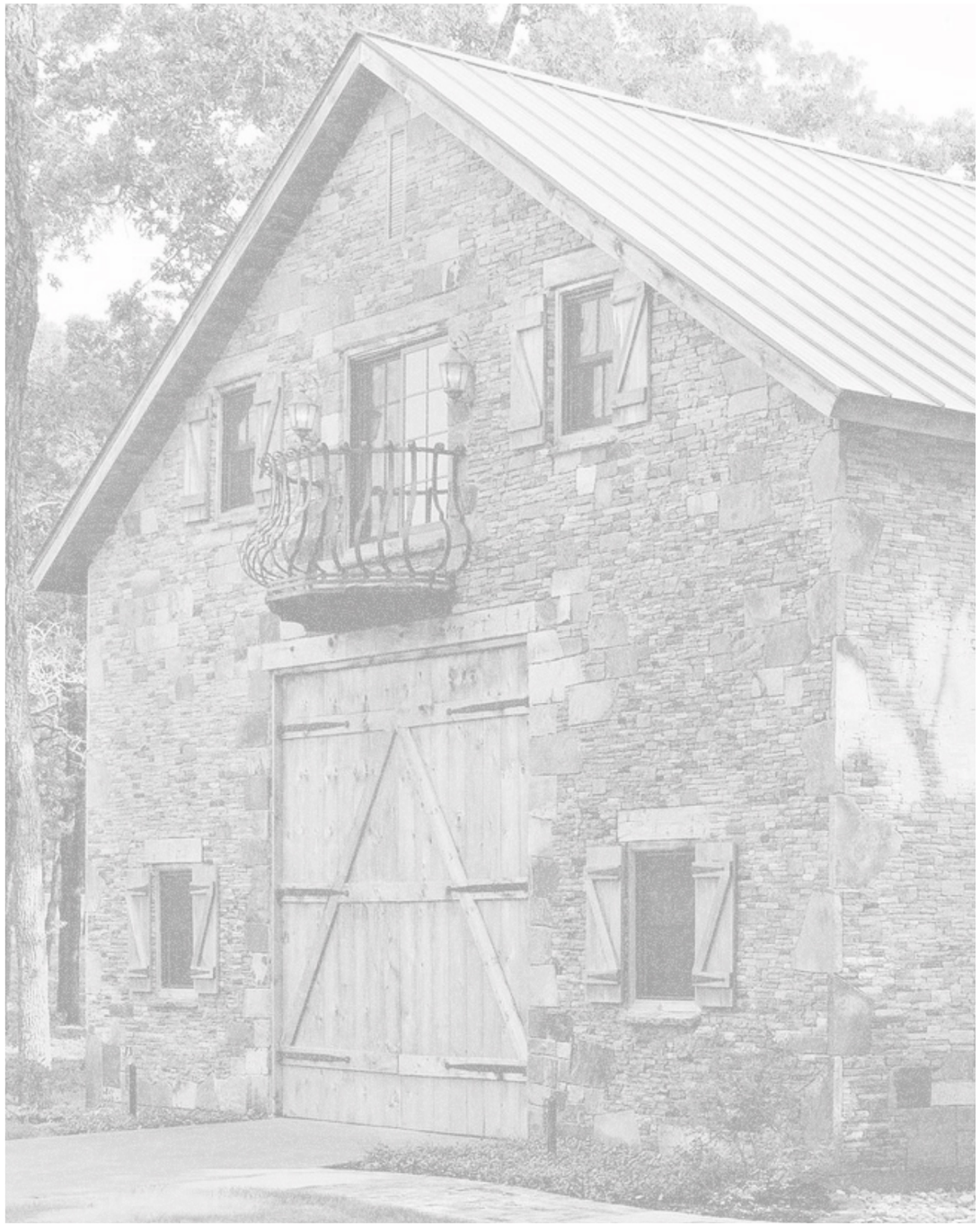
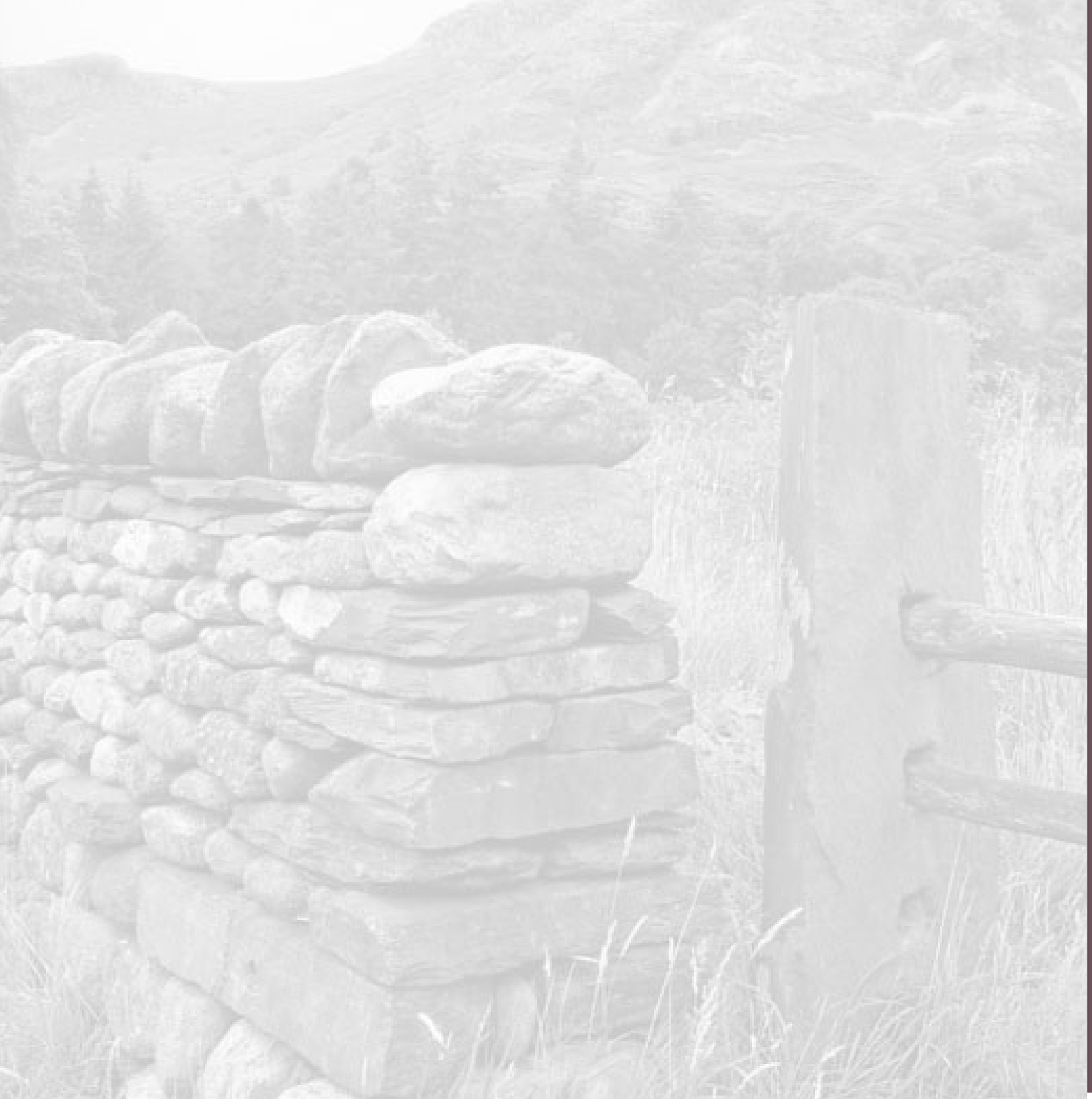
Section 5: Appendix

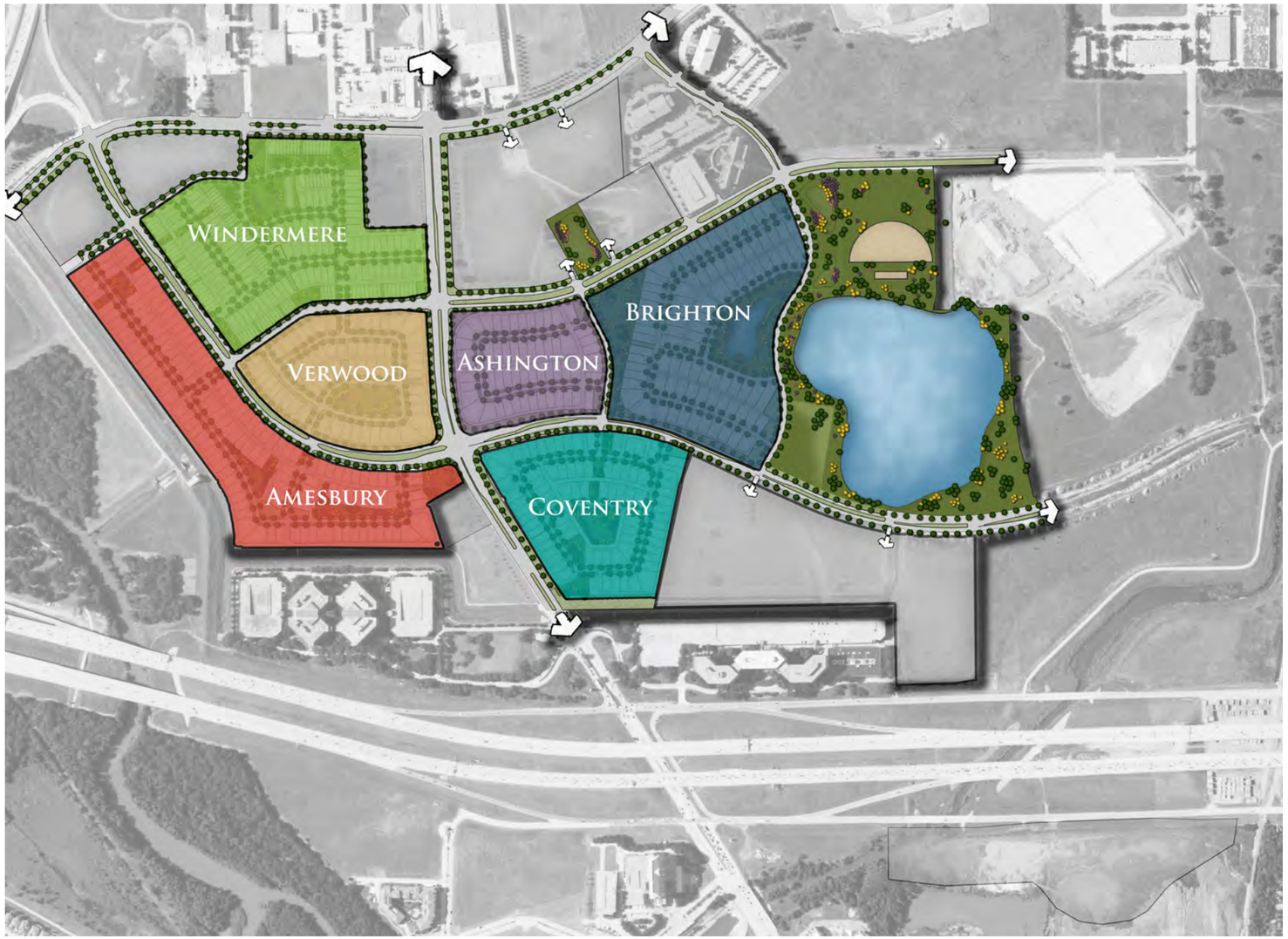




Section 1
Introduction

1.1 Neighborhoods

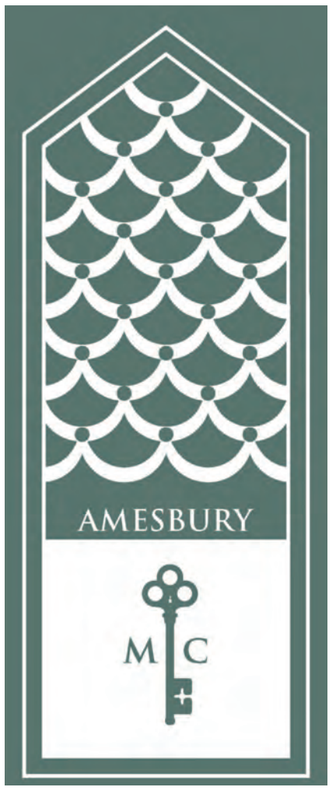
1.2 Neighborhood Logos



Each Single Family Neighborhood in Mercer Crossing shall create a distinct identity through the use of different entry feature elements, neighborhood names, and plant palettes. The look and feel of each neighborhood shall reinforce the Texas Tudor Theme of the overall community. The purpose of distinct neighborhoods is to create a unique atmosphere throughout the Mercer Crossing development and evoke a sense of place among the residents.

The names of the neighborhoods shall be as follows:

- Amesbury
- Ashington
- Brighton
- Coventry
- Verwood
- Windermere


AMESBURY
M C

ASHINGTON
M C

BRIGHTON
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COVENTRY
M C

VERWOOD
M C

WINDERMERE
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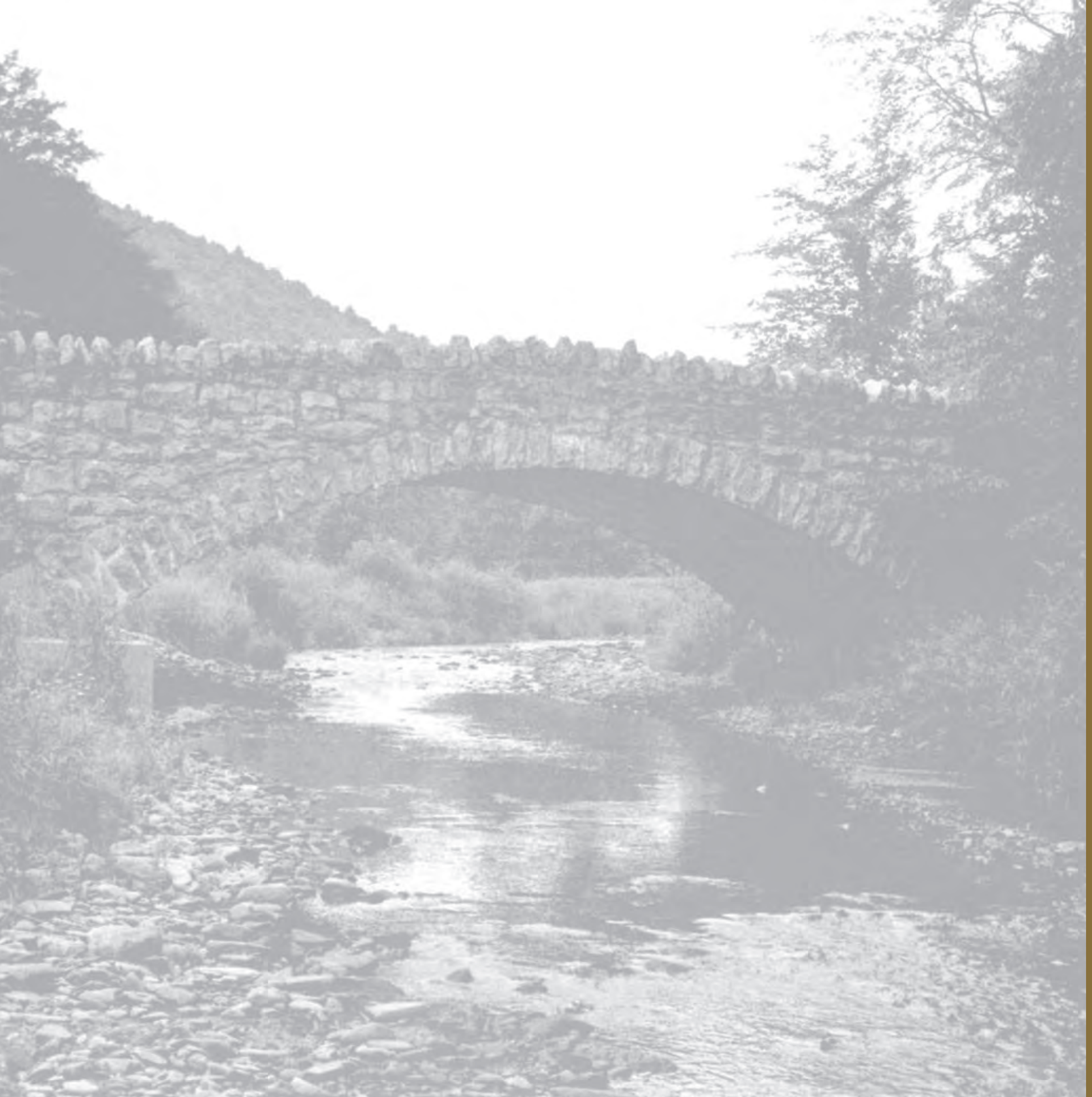
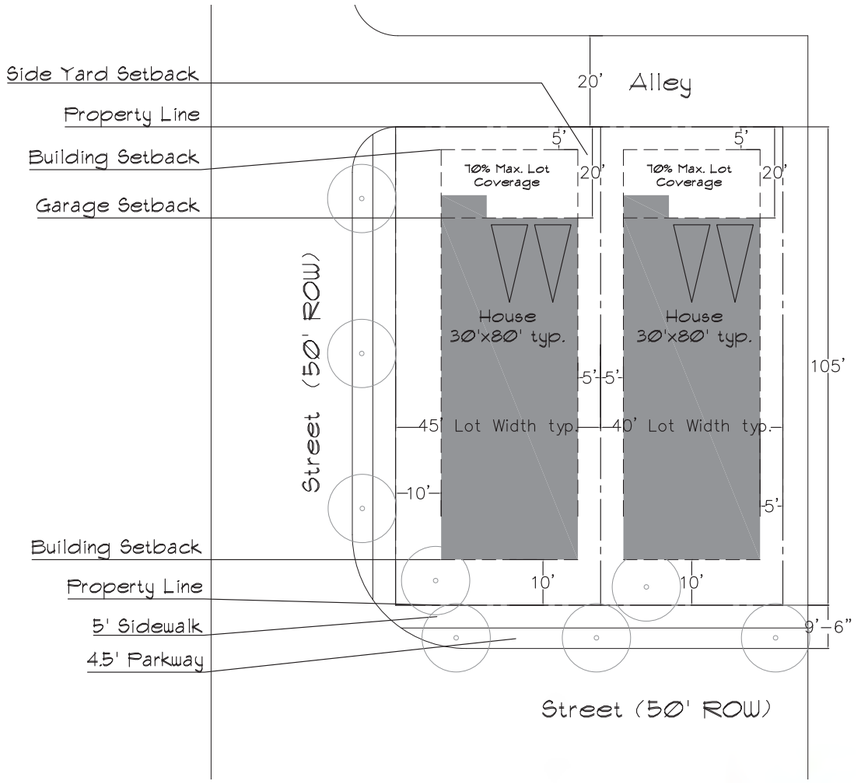


Section 2
Lot Patterns

2.1 Lot Design Standards

2.2 Lot Landscape



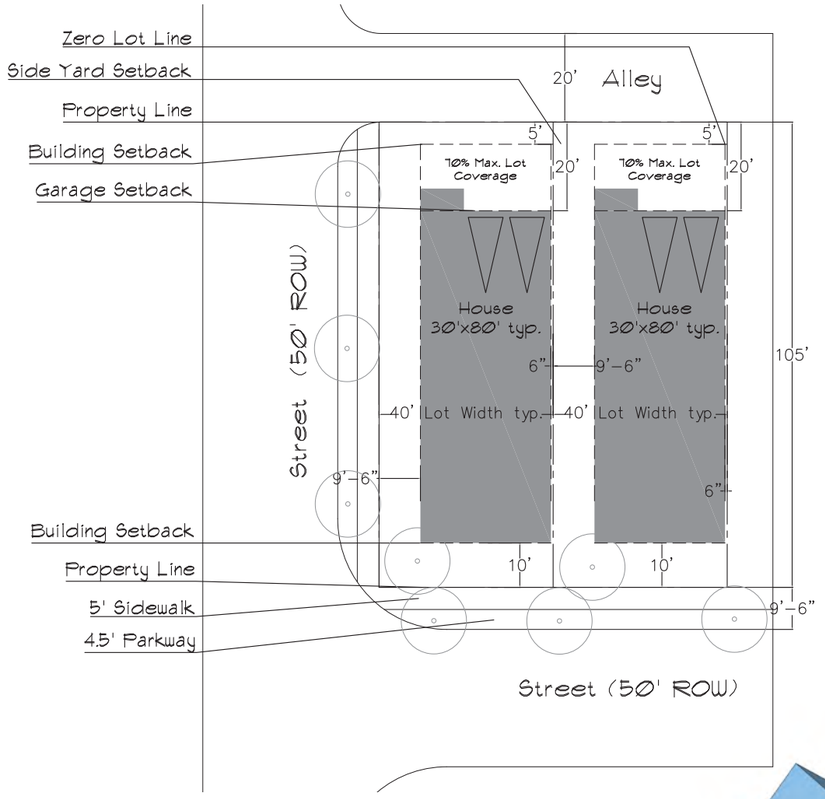
Type 3 - Single Family Residential

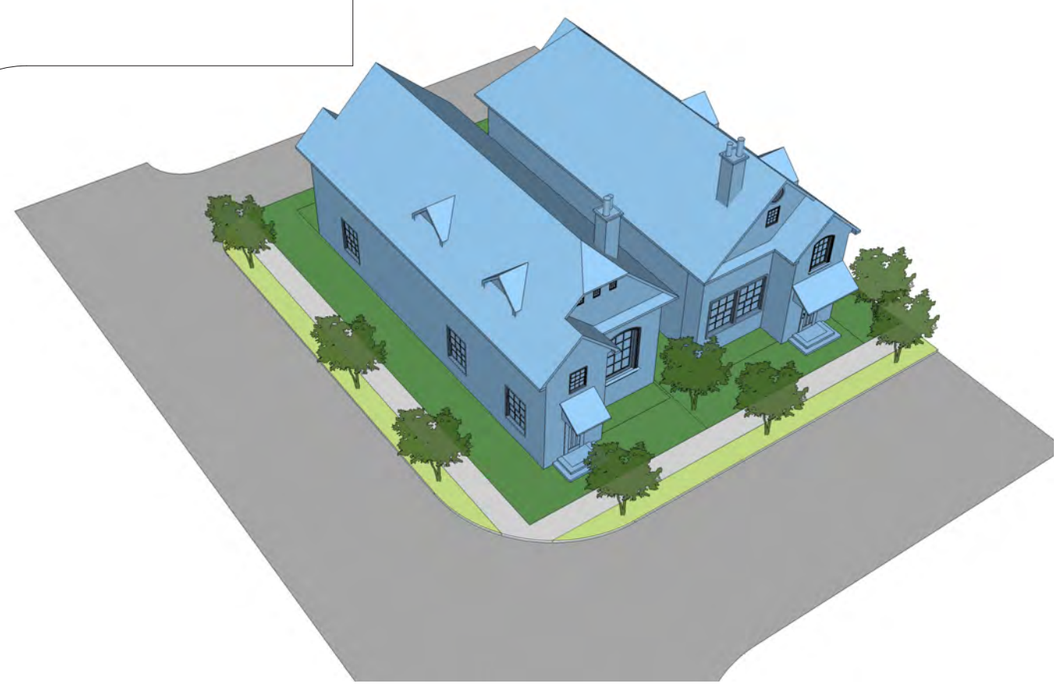
SFD-40 - Single Family Detached, 40' Width

Located in the same neighborhood as the attached townhomes, the 40' wide detached lots continue the transition from urban commerce to lower-density residential. Lots may feature a 5' side yard setback on either side, or a .5'/9.5' side yard setback for a zero-lot-line configuration. Refer to detailed site plan for exact location of residential lots.

SFD-40 Regulations:Architectural Elements:

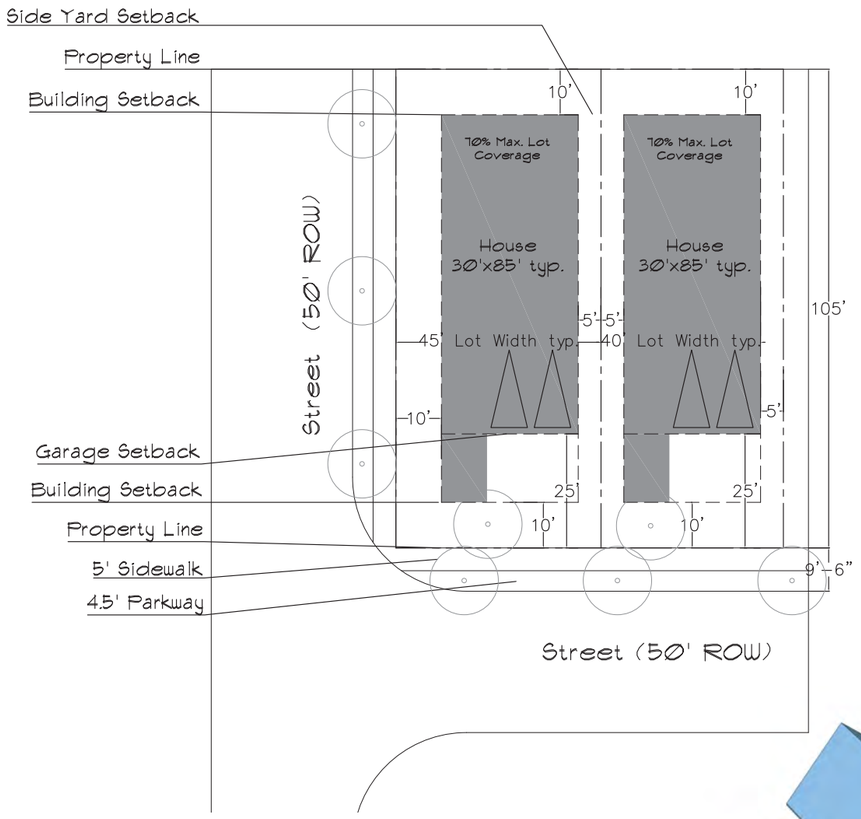
Min. Lot Area: 4,200 SF
Min. Lot Width: 40'
Min. Lot Depth: 105'
Max. Height: 35'
Max. Stories: 2.5
Min. Front Yard Setback: 10' Rear-Load/ 10' J-Swing/25' Front-Load
Min. Rear Yard Setback: 5' Rear-Load
Min. Interior Side Yard Setback: 5' or .5'/9.5' for zero-lot line homes
Garage Orientation: Rear
Min. Square Footage: 1,800 SF
Max. Lot Coverage: 70%

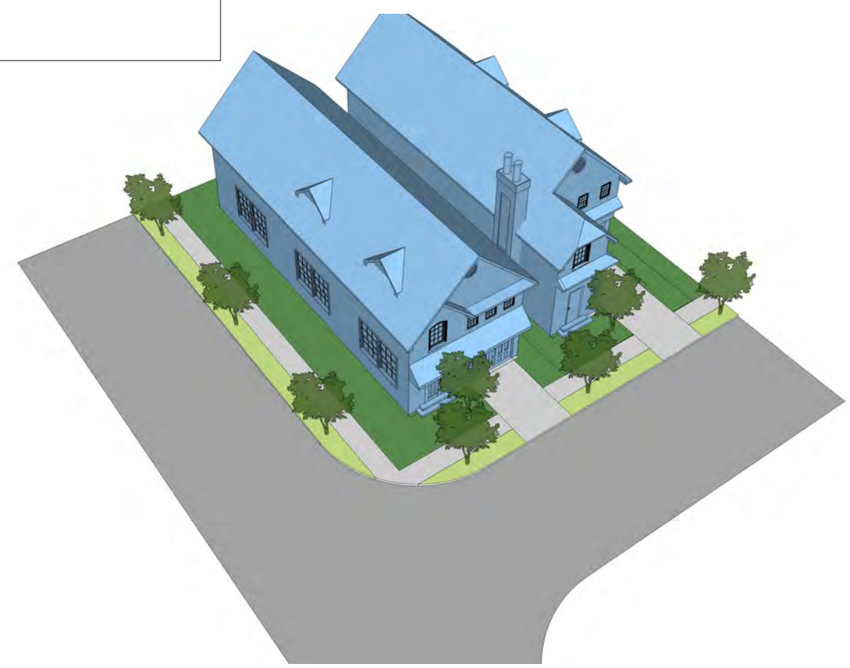




2.1 Lot Design Standards

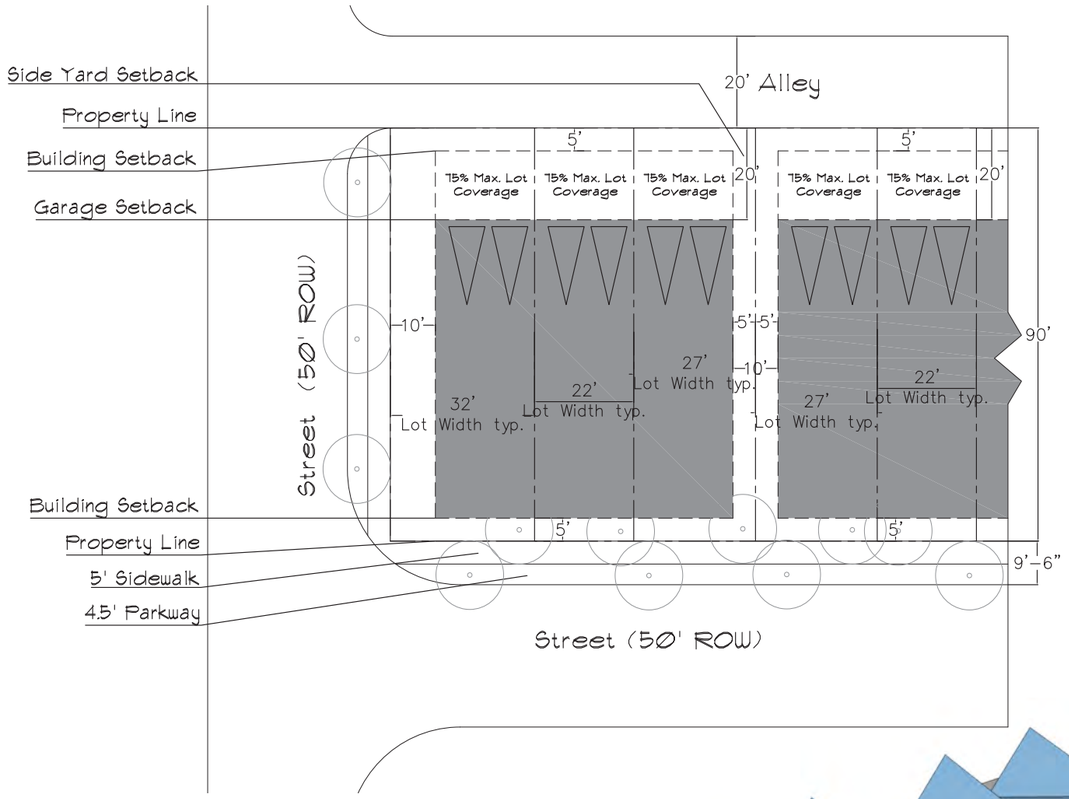
40' Rear Loading Zero Lot Line





2.1 Lot Design Standards

40' Front loading



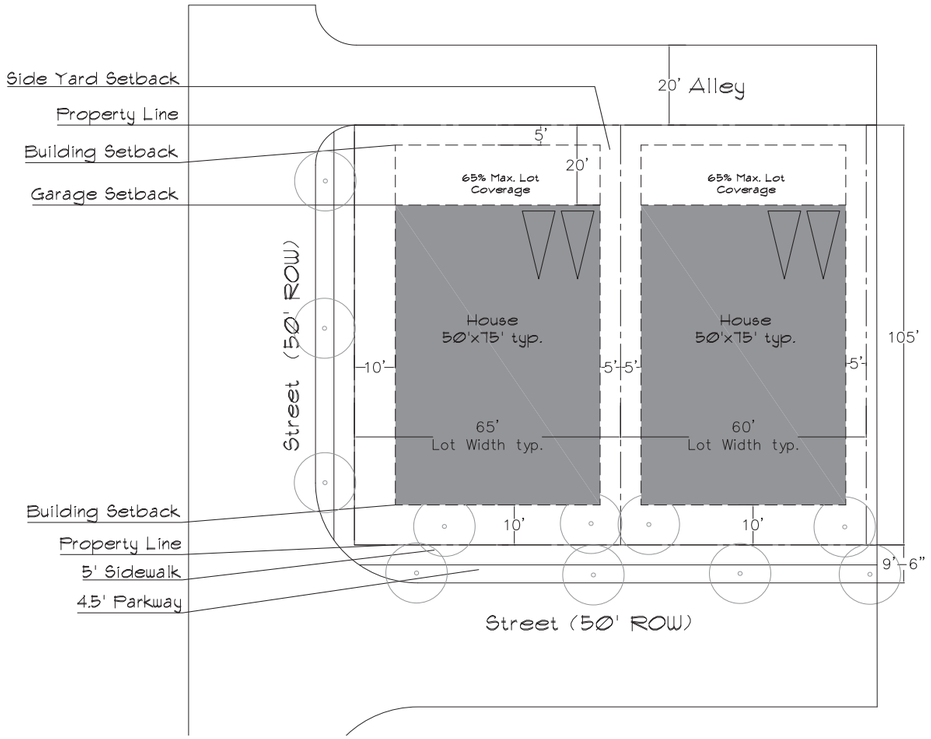
SFA – Attached Townhome

Townhomes are located on the western half of Mercer Crossing, the residential neighborhood closest to Valley View Lane. The townhomes serve as a transitional use between the urban commerce parcels and the lower-density residential uses. Refer to detailed site plan for exact location of residential lots.

SFA Regulations:

Min. Lot Area: 1,980 SF
Min. Lot Width: 22′
Min. Lot Depth: 90′
Max. Height: 45′
Max. Stories: 3.5
Min. Front Yard Setback: 5′
Min. Rear Yard Setback: 5′
Min. Interior Side Yard Setback: N/A
Garage Orientation: Rear Loading
Min. Square Footage: 1,600 SF
Max. Lot Coverage: 75%

* Townhomes shall be limited to building groupings that do not exceed 9 units in length with each building grouping required to have a building separation of not less than ten (10) feet between building groupings.

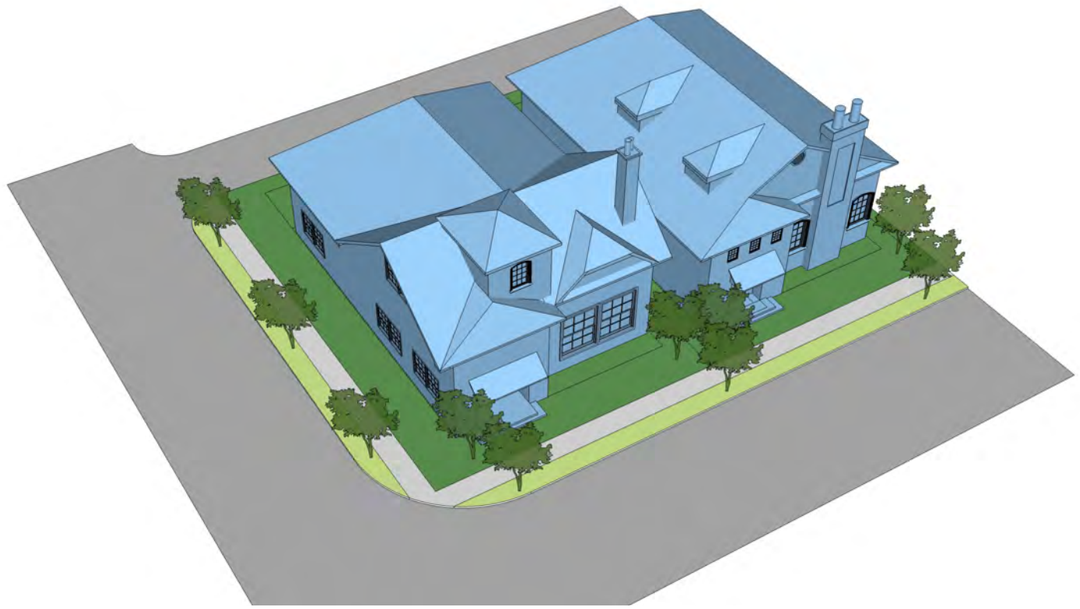


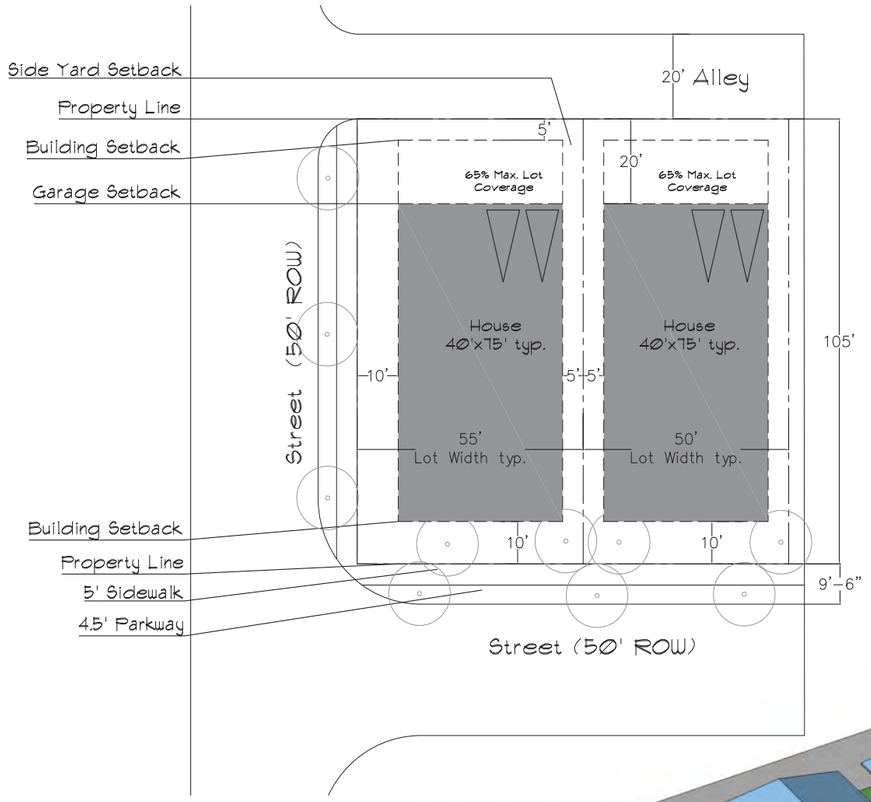
Type 1 - Single Family Residential

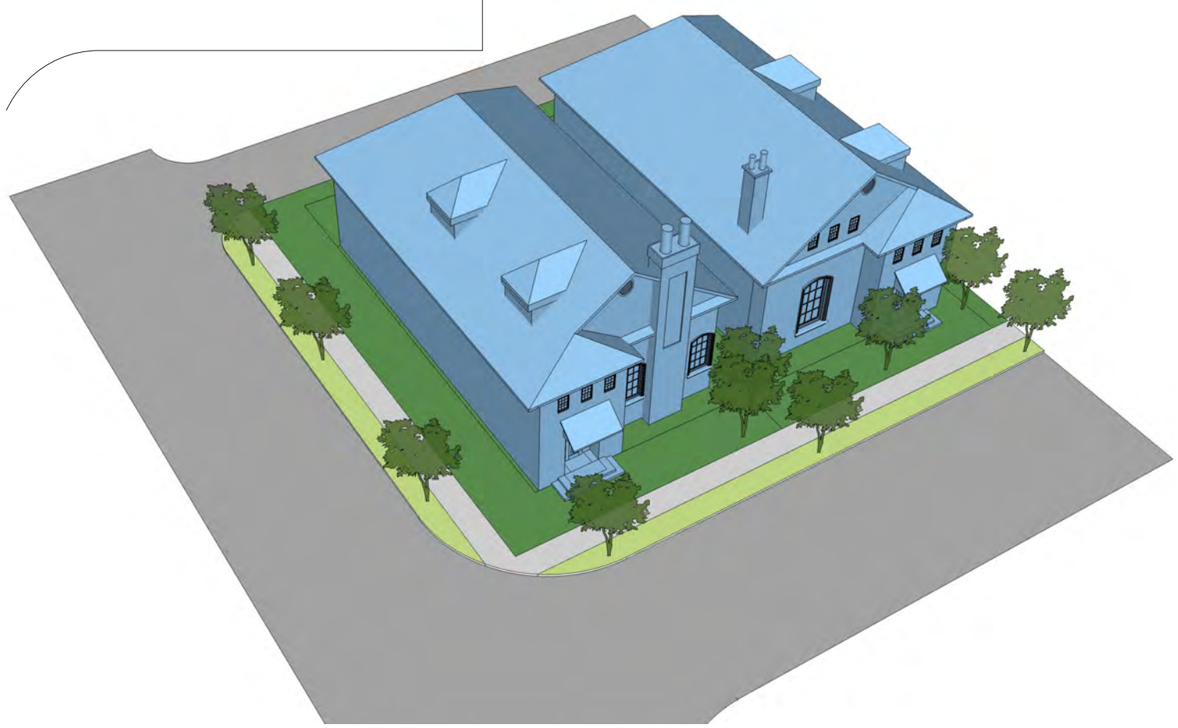
SFD-60 – Single Family Detached, 60′ Width

SFD-60 is the largest residential lot size in the Mercer Crossing Urban Residential district. Located near the eastern boundary of the Mercer Crossing development, this neighborhood is centered on open space. The required rear-loading lot configuration provides a quiet streetscape and attractive street frontages. Refer to detailed site plan for exact location of residential lots.

SFD-60 Regulations:
Min. Lot Area: 6,300 SF
Min. Lot Width: 60′
Min. Lot Depth: 105′
Max. Height: 40′
Max. Stories: 3.0
Min. Front Yard Setback: 10′
Min. Rear Yard Setback: 5′
Min. Interior Side Yard Setback: 5′
Garage Orientation: Rear Loading







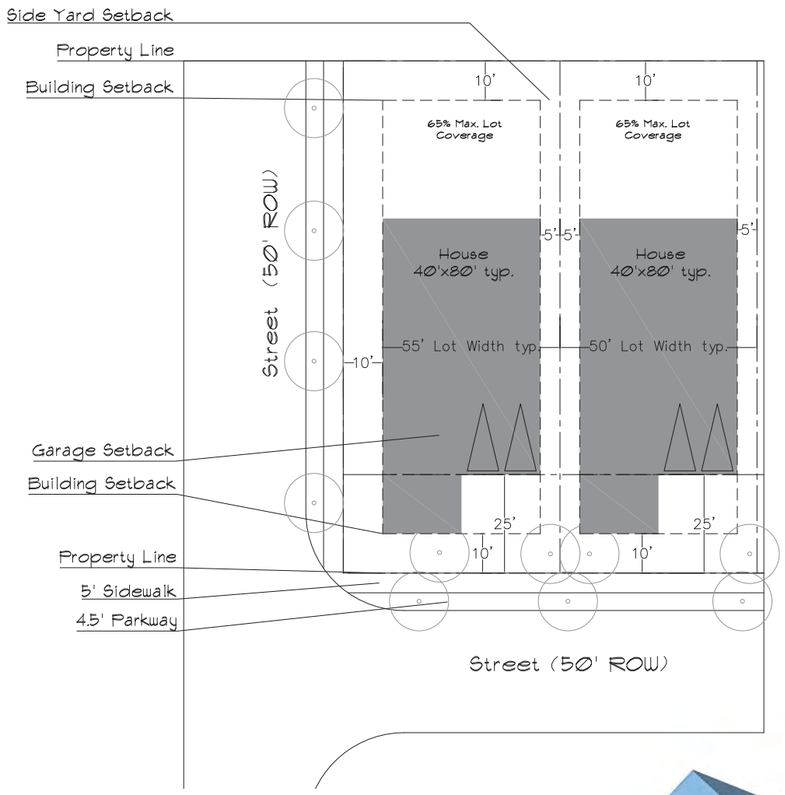
Type 2 - Single Family Residential

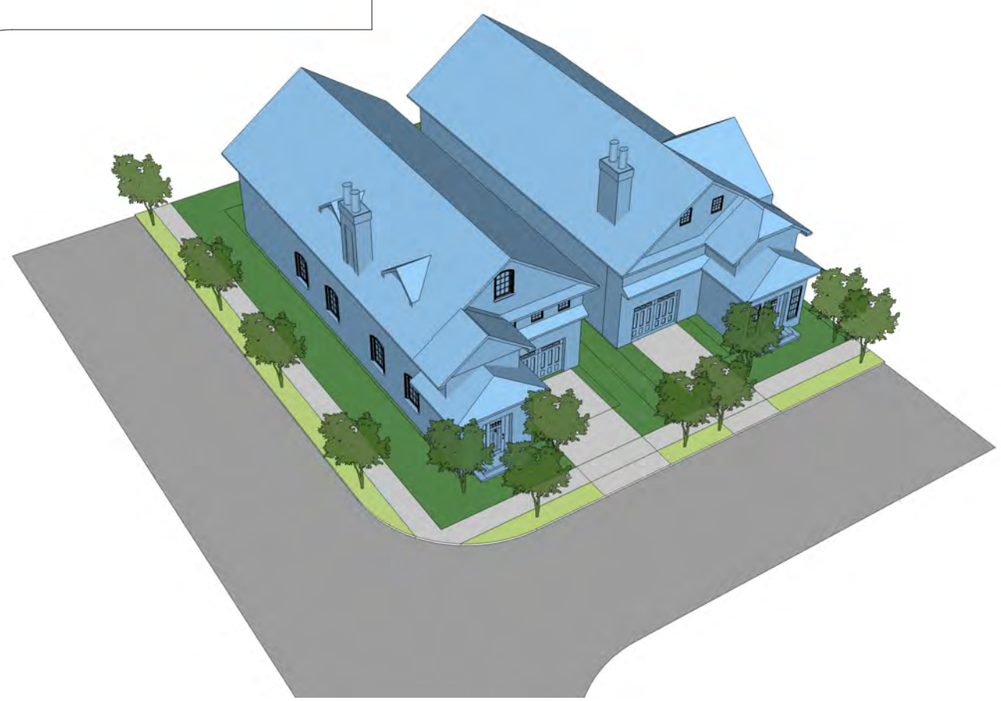
SFD-50 – Single Family Detached, 50′ Width

The SFD-50 residential districts are traditional single-family detached neighborhoods, and are the most common lot size in Mercer Crossing. Lots can be either rear-loading or front-loading, with an option for J-swing garages. Refer to detailed site plan for exact location of residential lots.

SFD-50 Regulations:

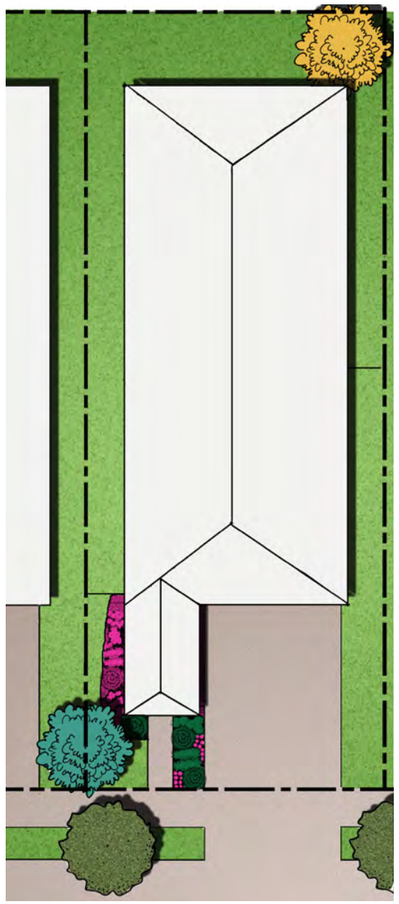
Min. Lot Area: 5,250 SF
Min. Lot Width: 50′
Min. Lot Depth: 105′
Max. Height: 35′
Max. Stories: 2.5
Min. Front Yard Setback: 10′ Rear-Load/10′ J-Swing/25′ Front-Load
Min. Rear Yard Setback: 5′ Rear-Load/10′ Front-Load
Min. Interior Side Yard Setback: 5′
Garage Orientation: Rear or Front Loading
Min. Square Footage: 2,200 SF
Max. Lot Coverage: 65%



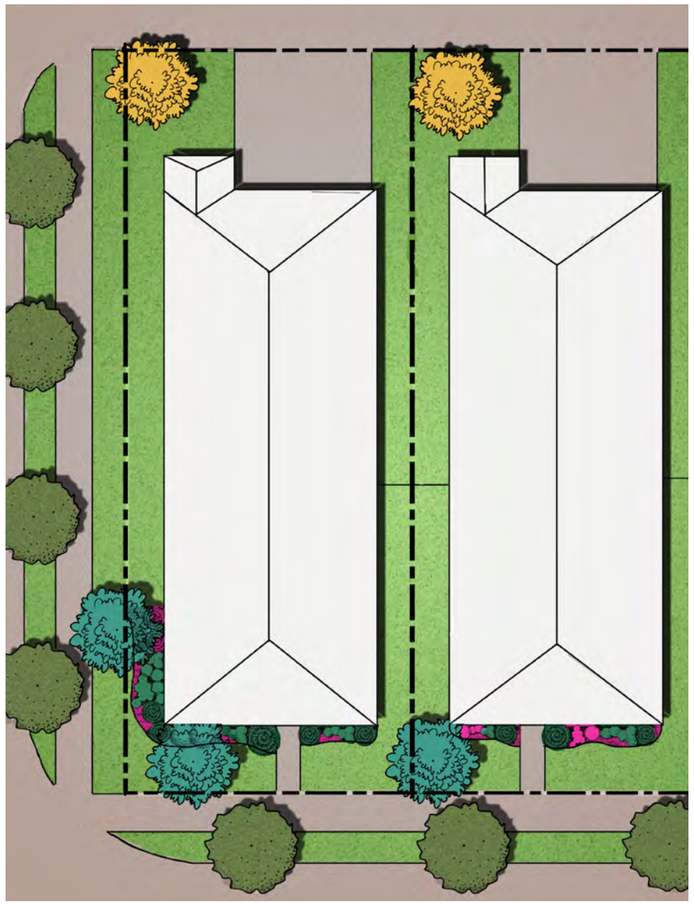


2.1 Lot Design Standards

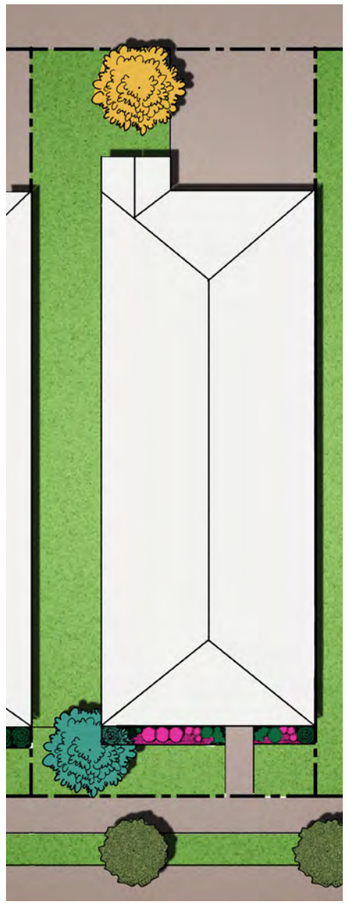
50' Front loading Lot



40′ Front Loading



40′ Rear Loading- Corner Lot

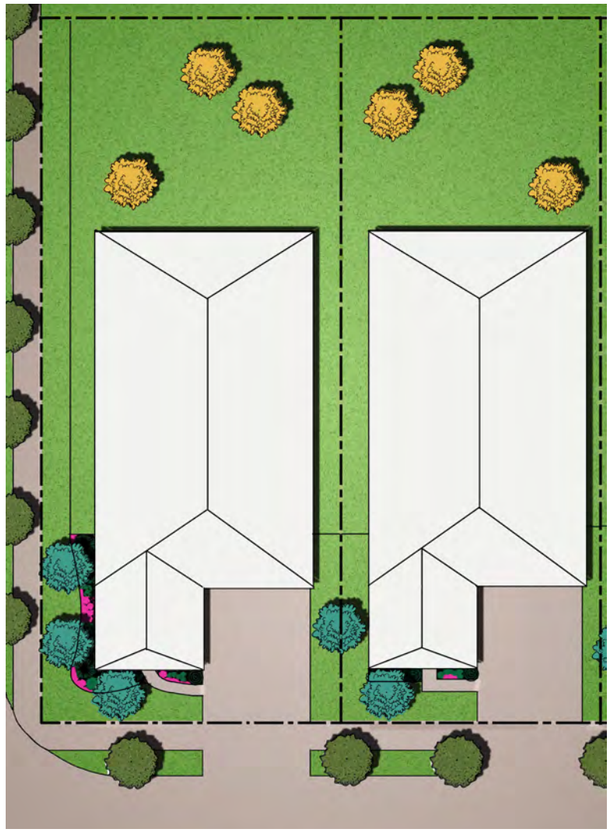


40′ Zero Lot Line

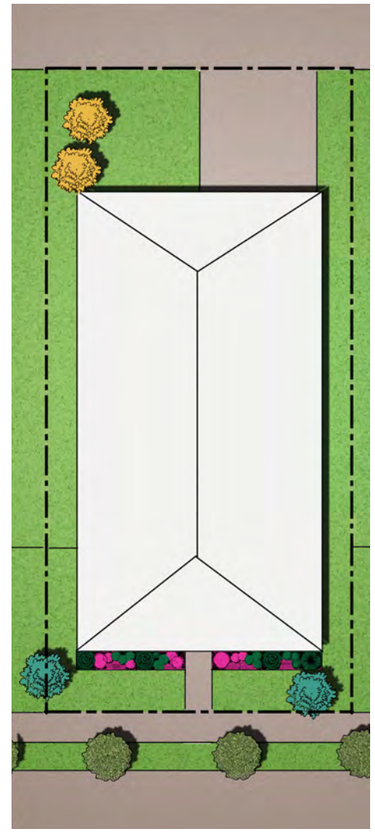
The diagrams shown (left) demonstrate the required landscape and the strongly suggested enhancements that should be installed. All landscape installations shall follow an English country garden theme and all plants must come from the provided plant list in the appendix.

The minimum landscape requirement for a 40 foot residential lot is 1 large shade tree, 3 five gallon shrubs, and 8 one gallon shrubs. Any 40 foot corner lots must have the following additional requirement, 1 large shade tree, 4 five gallon shrubs, and 12 one gallon shrubs.

- Enhanced Shrubs
- Required Shrubs
- Enhanced Trees
- Required Trees
- Street Trees



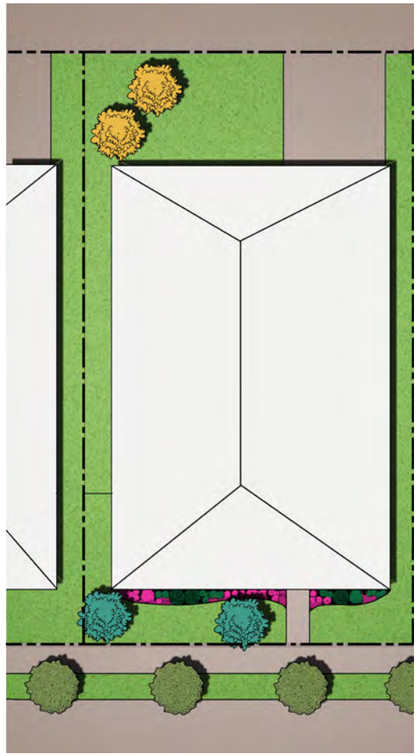
50′ Front Loading



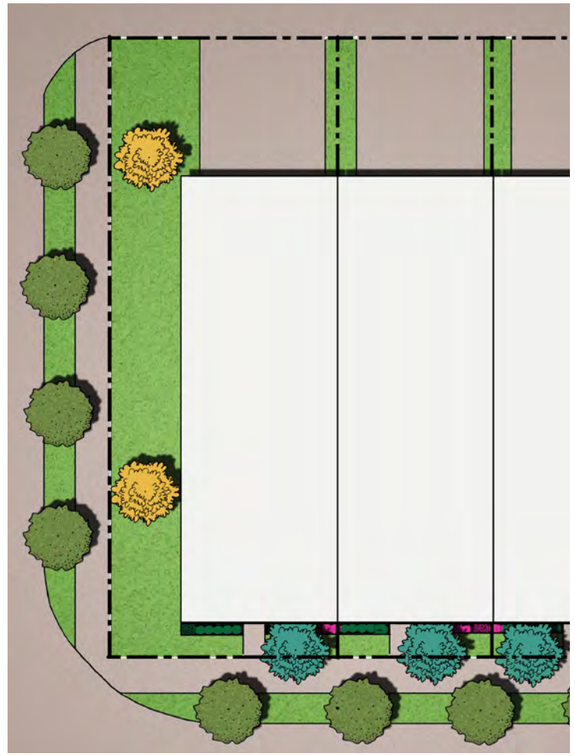
50′ Rear Loading

The minimum landscape requirement for lots over 50 foot residential lot is 2 large shade tree, 4 five gallon shrubs, and 12 one gallon shrubs. Any lot over 50 foot and on the corner must have the following additional requirement, 1 large shade tree, 4 five gallon shrubs, and 12 one gallon shrubs.

- Enhanced Shrubs
- Required Shrubs
- Enhanced Trees
- Required Trees
- Street Trees



60′ Front Loading



Townhomes

The minimum landscape requirement for a lots under 40 foot residential lot is 1 large shade tree, 2 five gallon shrubs, and 6 one gallon shrubs. Any lots under 40 foot and on the corner must have the following additional requirement, 1 large shade tree, 4 five gallon shrubs, and 12 one gallon shrubs.

- Enhanced Shrubs
- Required Shrubs
- Enhanced Trees
- Required Trees
- Street Trees

Section 3
Architectural Standards

3.1 Neighborhood Diversity

3.2 Facade & Materials

3.3 Windows

3.4 Doors & Entrances

3.5 Roof Elements

3.6 Chimneys

3.7 Garage

3.8 Mailboxes & Addressing

3.9 Conceptual Elevations

Architectural Diversity for Single Family Detached

In order to promote architectural diversity within the neighborhoods, facade elements should vary from house to house. By highlighting variations of the following architectural elements each neighborhood will seem unique in nature. For complete understanding of the builder's elevation please refer to the detailed site plan.

- Balcony
- Front Porch
- Chimney
- Patio Courtyard
- Masonry, stone, or cast stone accents
- Double entry doors
- Covered entry
- Dormers
- Cedar shutters
- Natural stone (25% front facade)
- 10:12 or greater roof pitch
- Gables with architecture feature
- Arch top windows
- Circle top windows
- Stained wood columns

Building Facade

Residential facades should include characteristics consistent with the overall theme. Facades should be articulated and include a combination of materials or architectural accents to look inviting from the street. Most homes in Mercer Crossing are rear-entry, which allows the garage door to be hidden from the street and enhances the overall appearance of the front facade.

Facade Materials

Materials for the residential facades shall be predominately masonry, which includes a combination of brick, stone, or stucco. A variety of brick and stone patterns can be incorporated into each facade to create architectural interest. Soldier course and herringbone are just a couple of brick patterns that may be used in a facade. A variety of stone patterns, such as split-face, rectilinear, or stacked stone, can also be used to compliment and enhance the architectural style of a home. The use of stucco shall be cementitious plaster with a smooth finish. A combination of these masonry materials shall make up at least 75% of the facade area.

Secondary materials may include hardi-plank, provided that it is no more than 25% of the facade. Accent materials may be used for up to 5% of the facade and include a variety of materials for architectural elements such as trim, soffits, eaves, lintels, shutters, and cornices. Other materials may include pre-cast masonry or gypsum reinforced fiber concrete. Wood or faux wood may also be used for trim, eaves, soffits, eave brackets, and shutters to accentuate the Texas Tudor theme and may be used up to 25% of the facade for this purpose.

Architectural elements such as clipped gables, half timbering, columns, and arched windows are encouraged for the residential street-facing facades. Elements such as these contribute to the overall community theme and unify the neighborhoods with consistency, and also provide an upscale feeling.

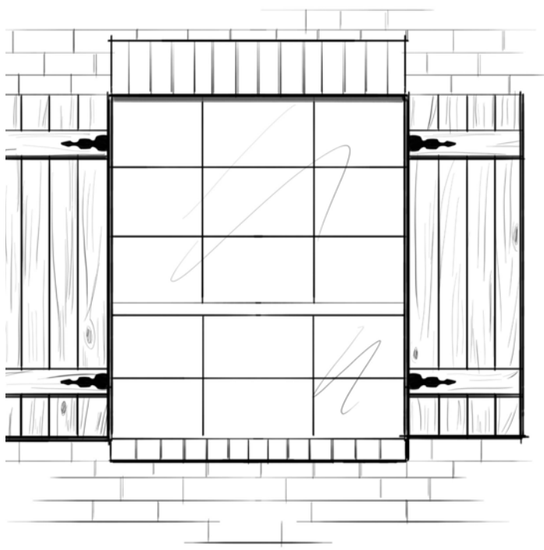
A variety of window styles may be used to reinforce the architectural theme. Examples that are highly indicative of the Texas Tudor theme include windows with an eyebrow arch made of brick soldier course or windows with shutters. Dormers projecting through the roof are also indicative of the community theme, and may be constructed of a different facade material to be more decorative.

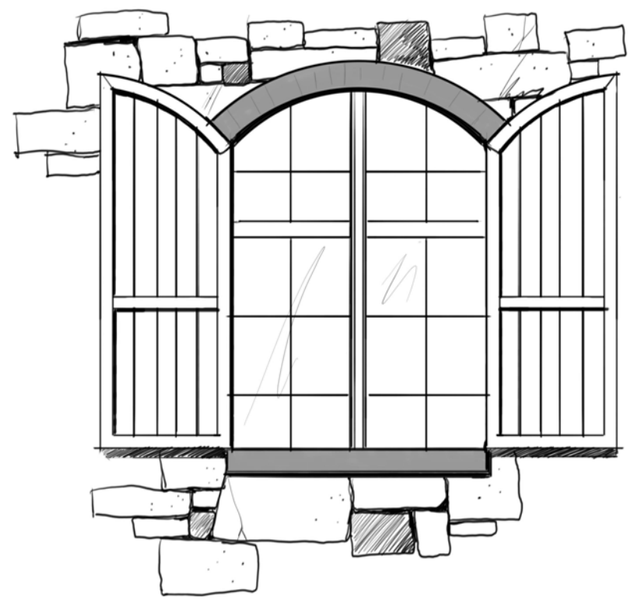
Windows shall be appropriately scaled on the facade. The horizontal dimension of the window opening shall not exceed the vertical dimension, except that a maximum of five windows may be mulled together to form a compound window. This compound window may be wider than it is tall as long as each window is separated by a mullion, column, pier, or wall section.

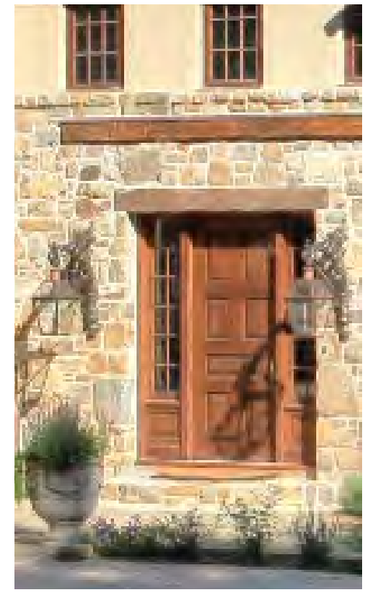
The use of window panes is encouraged. Raised or internal muntins and a variety of patterns such as England, colonial, or diamond. The casing and mullions should consist of earth tone colors and should frame the windows in such a way as to make them stand out.

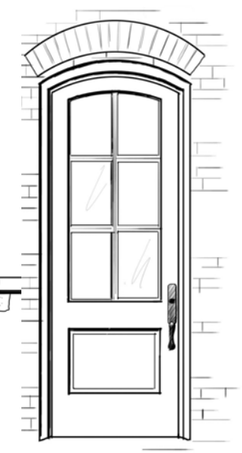
Window canopies and awnings may be used to accentuate the window and may consist of metal , tile, slate or shingled roofing. Mansard style window awnings, the use of bay windows, and canopies help break up the facade plane, enhance architectural quality, and give the homes character.

The use of window screens is allowed provided that the color of the screen is black or gray. Solar screens are not allowed on a facade that faces a public space , including streets, alleys, or parks. Specialty windows, like stained-glass, opalescent, or glass block, can be incorporated into the design.









Doors

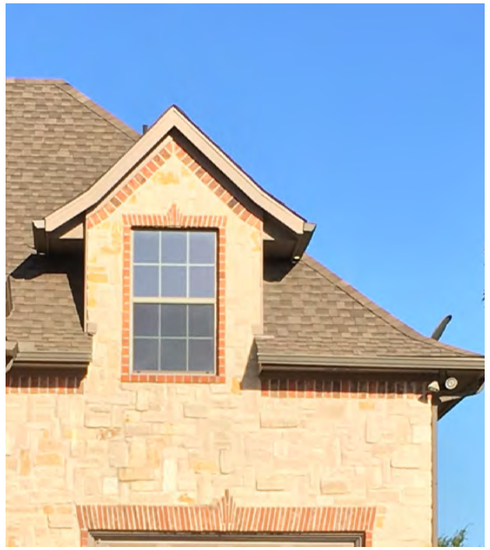
Front doors that face the street may be wood or consist of a wood simulation material. There shall be at least two door panels. Doors may predominantly consist of glass or opalescent glass. The use of iron or metal accents is encouraged on doors that are mostly glass to enhance the residential architectural style.

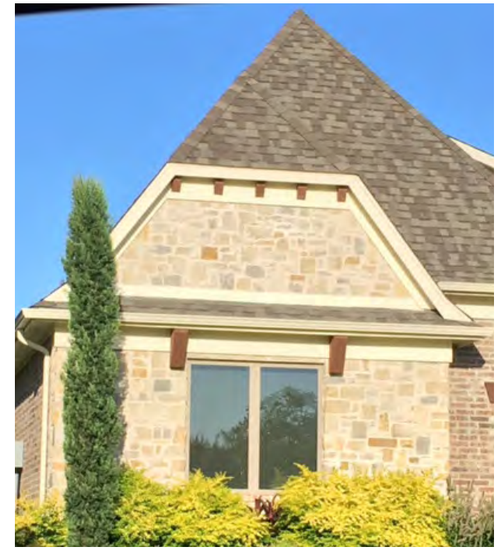
Painted doors are allowed provided that the color is consistent with the theme. The use of earth tone colors on front doors is encouraged.

Entrances

Residential entries should be sheltered with a porch, canopy, or awning, and should be distinguishable from the street. A sidewalk from the street to the front door shall be provided so that residents and visitors can park on the street and walk to the front door with ease. In some cases, a stoop may be necessary.

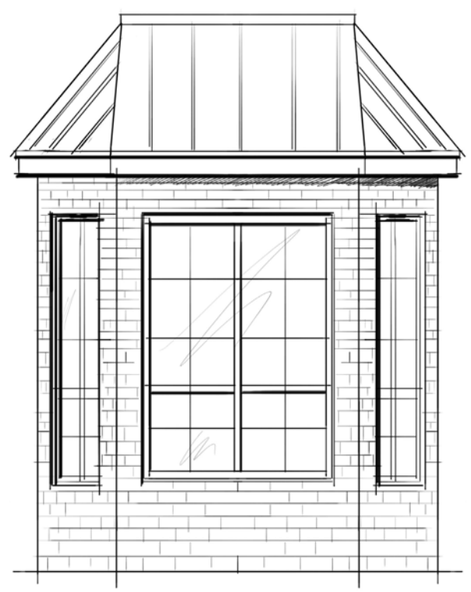
The porch floor may consist of either brick, concrete, or stamped and stained concrete. Porch lights are important to emphasize the entrance, and may include lights inside the porch area that are mounted to the ceiling, or wall sconces. Gutters are required on sloped roof entrances.

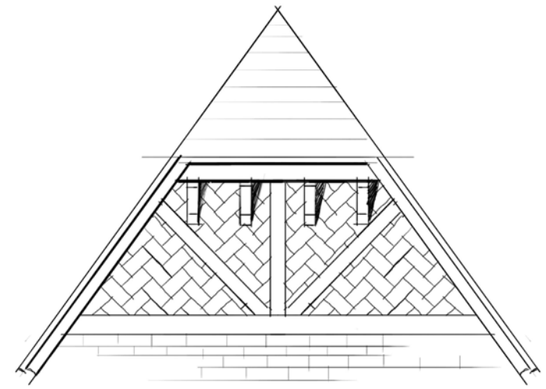


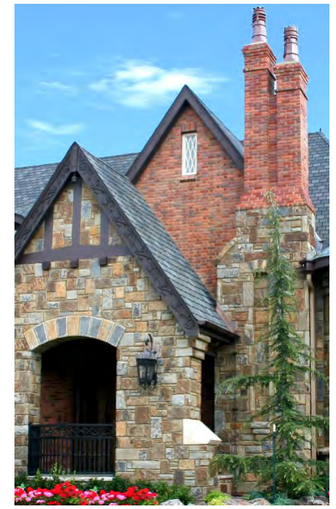


Residential roofs should include a variety of pitched roofs with hip and gable styles at symmetrical slopes of 8:12 or greater. Steep roofs are encourage to reinforce the architectural theme. Flat roofs may be used on attached homes provided that a parapet is include to so that the roof is not visible from the ground.

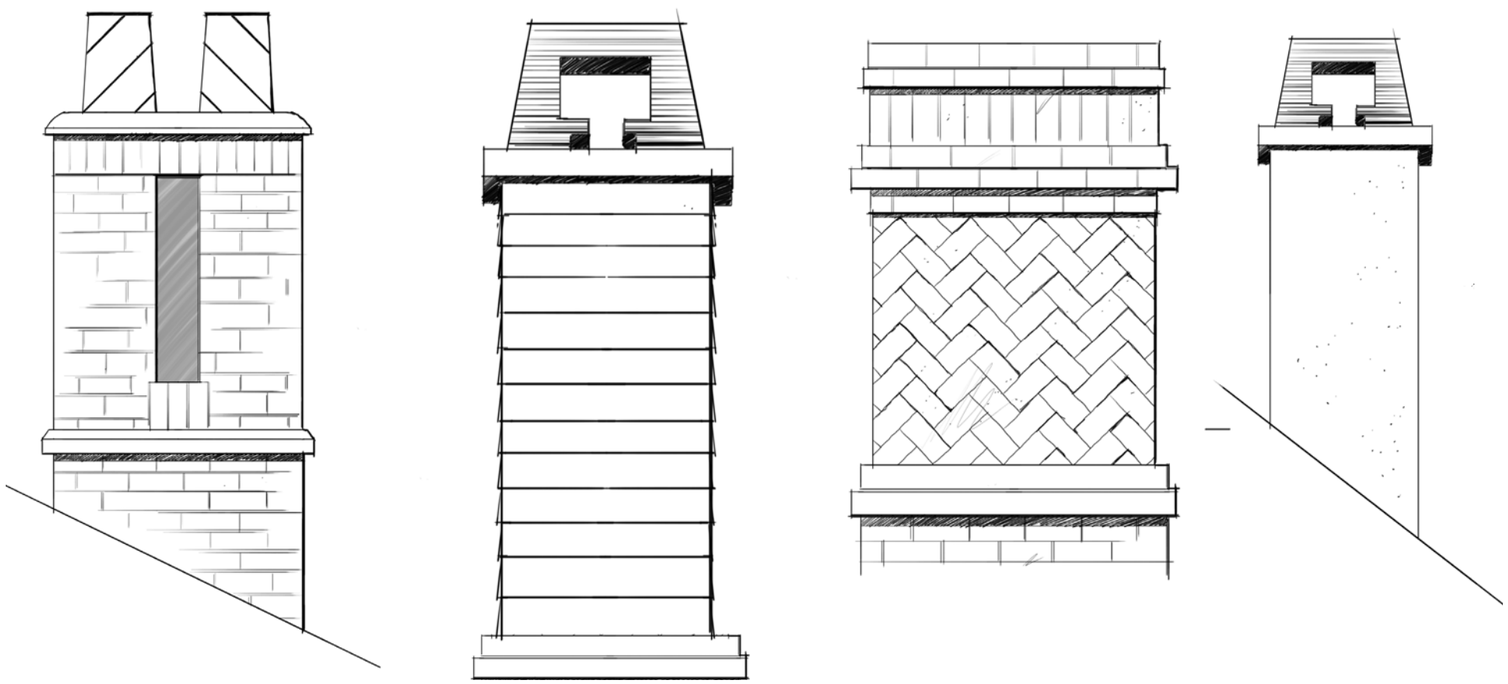
Roofs should consist of one dominant material with accent roof materials used on canopies or awnings. Materials may include asphalt shingles (at least 30 year composition), or tile (clay or concrete). Metal standing seam may be used on canopies for porches, windows, and accent roofs. Cornices, soffits, eaves, and eave brackets may be wood, metal, or Hardi-plank. Clipped gables may be included to enhance the architectural theme. Half timbering may also be used in gables to create the English look and feel. Dormers and chimney chases shall consist of masonry or Hardi-plank. Fireplace flues shall be enclosed in a finish that compliments the architectural style of the home.







A key element of the Texas Tudor style is the added character that comes from the elaborate chimneys. As shown to the left, chimneys shall be constructed of stone or masonry, and all chimneys should depict the Tudor style as shown in the provided example photos. The use of decorative terra cotta chimney pots is highly encouraged to enforce the architectural style, but not required.



3.6 Chimneys

Rear Entry Examples

Front Entry Examples

Creating an attractive, high-quality streetscape encourages pedestrian activity and promotes a sense of community among residents. In order to enhance the overall appearance of the neighborhoods and emphasize pedestrian entries to the home, garage doors are subject to the following restrictions:

1. Rear-loading garage doors shall be decorative aluminum or real wood cedar veneer.

2. Front-loading garage doors shall be real wood cedar veneer.

3. Front-loaded garages must be recessed a minimum of 5 feet from the front facade, unless the garage is perpendicular to the street (j-swing).

Additionally, elements such as decorative metal hinges and door handles may be used to enhance the Texas Tudor theme.

In all residential areas USPS-approved cluster mailboxes shall be used. Mailboxes should be cohesive in material in that they reflect the Texas Tudor design theme. Acceptable materials and color palettes can be found the attached appendix.

All mailboxes locations are subject to approval by the U.S. Postal Service and can be found on the detailed site plan.

The brick detailing and standing seam accents make this a great rear entry example.

The above image sets an ideal standard for the Texas Tudor Design theme. The chimney detail, brick patterns, and color palette are all strong architectural elements.

The image above is an excellent variation of the top left elevation. By varying colors of materials the same look can easily be accomplished.

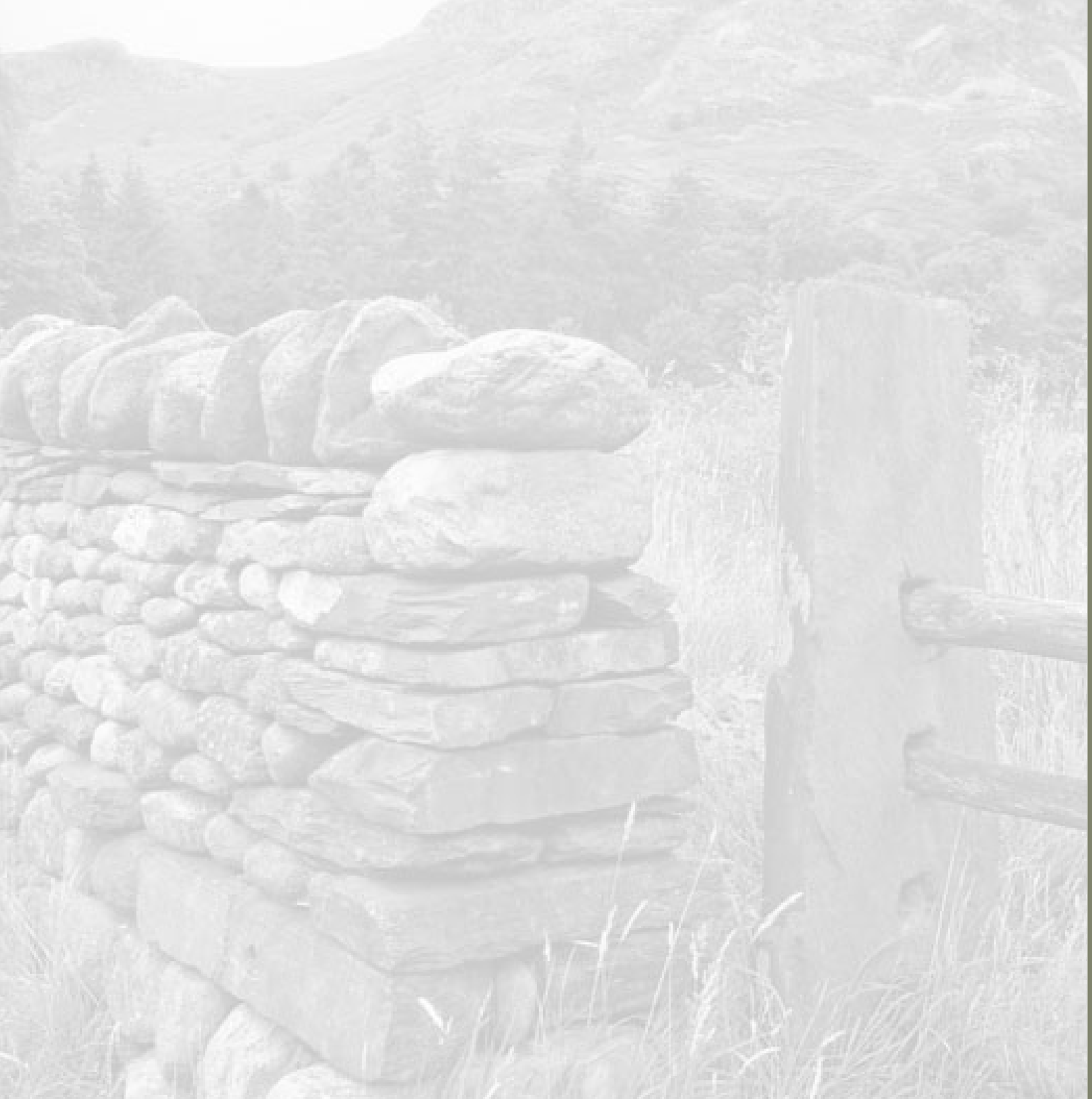
In this image the half timbering and multi-paned windows are the highlighted Texas Tudor elements to replicate.

There are very few front entry lots in Mercer Crossing, but this is a prime example to be used. The brick details, half timbering inlay reinforce the Texas Tudor style.

This is another great front entry elevation. The intricate detail on the chimney and the use of native materials are the very definition of Texas Tudor.

The multiple Texas Tudor elements include: eyebrow windows, cedar shutters, herringbone brick details, and native building materials.

The above townhome elevation includes Standing seam accents, multi-paned windows, half timbering, and an acceptable color palette.



Section 5
Appendix

5.1 Plant Palette

5.2 Shingle Palette

5.3 Brick Palette

5.4 stone Palette

5.5 Sheet Metal Palette

5.6 Exterior Paint Palette

Trees

Thornless Honey Locust
Gleditsia triacanthos

Chinese Pistache
Pistacia chinensis

Shumard Oak
Quercus shurmardi

Red Oak
Quercus buckleyi

Chinquapin Oak
Quercus muhlenbergii

Live Oak
Quercus virginia

Lacebark Elm
Ulmus parvifolia

Cedar Elm
Ulmus crassifolia

Pecan
Carya Illinoinensis

Pond Cypress
Taxodium Ascendens

Bald Cypress
Taxodium distichum

Ornamental Trees

Texas Red Bud
Cercis Canadensis var. Texensis

Crepe Myrtle
Lagerstromia Indica -all varieties

Magnolia
Magnolia grandiflora

Bur Oak
Quercus macrocarpa

Vitex
Vitex angus-castrus

Desert Willow
Chilopsis linearis

Yopaun
Ilex vomitoria -all varieties

Caddo Maple
Acer saccharum

Large Shrubs

Blue Point Juniper
Juniperus chinensis

Taylor Juniper
Juniperus virginiana 'Taylor'

Skyrocket Juniper
Juniperus scopulorum 'Skyrocket'

Nellie Stevens Holly
Ilex Nellie R Stevens

Fosters Holly
Ilex x attenuata 'Fosteri'

Burford Holly
Ilex cornuta -all varieties

Abelia
Abelia gradniflora

Forsythia
Forsythia x intermedia 'Kolgold'

Small Shrub

Indian Hawthorn
Raphiolepsis indica

Burford Holly
Ilex cortuna burfordii nana

Texas Sage
Leucophyllum F. Silverado

Rose of Sharon
Hibiscus Syriacus

Flowering Quince
Chaenomeles japonica

Lemon Lime Nandina
Nandina domestica 'lemon lime'

Carissa Holly
Ilex cortuna 'Carissa'

Boxwood
Buxus sempervirens

Rosemary
Rosmarinus officinalis

Dwarf Wax Myrtle
Myrica cerifera

Barberr
Berberis -all varieties

Spirea
Spirea japonica

Vines

Coral Honeysuckle
Lonicera sempervirens

Carolina Jasmine
Gelsemium sempervirens

Boston Ivy
Parthenocissus tricuspidata

Cross Vine
Anisostichus carpreolata

Clematis
Clematis -all varieties

Evergreen Wisteria
Millettia reticulata

Ground Covers

Asian Jasmine
Trachelospermum asiaticum

Liriope
Liriope gigantea

Mondo
Dwarf lilyturf

Purple Pixie Fringe Flower
Loropetalum chinense

Moneywort
Lysimachia nummularia

Vinca
Vinca minor

Bar Harbor Juniper
Juniperus horizontalis 'Bar Harbor'

Blue Pacific Shore Juniper
Juniperus conferta 'Blue Pacific'

Ornamental Grasses

Gulf Muhly
Muhlenbergia capillaris

Blue Grama Grass
Bouteloua gracilis

Karl Foerster Grass
Calamagrostix x acutiflora

Javelin Rush
Juncus pallidus

Little Bluestem
Schizarchyrium scparium

Northwind Switch Grass
Panium virgatum 'Northwind'

Inland Sea Oats
Chasmanthium latifolium

Weeping Love Grass
Eragrostis curvula

Sideoats Gramma
Bouteloua curtipendula

Dwarf Maiden Grass
Miscanthus sinensis

Mexican Feather Grass
Nassella tenuissima

Perennials

Autumn Sage
Salvia greggii

Butterfly Bush
Buddleja

Lamb's Ear
Stachys byzantina

Turk's Cap
Malvaviscus arboreus

Purple Coneflower
Echinacea purpurea

Blackfoot Daisy
Melampodium leucanthum

Dotted Gayfeather
Liatris punctata

Tickseed
Coreopsis -all varieties

Russian Sage
Perovskia atriplicifolia

Gaura
Oenothera lindheimeri

Daylilies
Hemeroc allis -all varieties

Artemisia
Artemisia tridentata

Blackeyed Susan
Rudbeckia hirta

Perennials

Pink Skullcap
Scutellaria suffrutescens

English Lavendar
Lavandula angustifolia

Lavendar Cotton
Santolina chamaecyparissus

Shasta Daisy
Leucanthemum x superbum

Mexican Hat
Ratibida columnifera

Texas Lantana
Lantana urticoides

White Mistflower
Ageratina hvanensis

Adobe Clay

Golden Harvest

Autumn Harvest

Stonewood

Mesa Brown

Dusky Gray

Mission Brown

Barkwood

**All swatches acquired from local manufacture, and serve as a color guide only. Any substitutions must be approved by the ARC.

5.2 Shingle Palette

Old Denver

Cedar Valley

Olde Towne

Ole South

Pine Ridge

Alton Bridge

Ross Ridge

Burgundy

Torrington

Windermere

**All swatches acquired from local manufacture, and serve as a color guide only. Any substitutions must be approved by the ARC.

Blue Brown Mill Ends

Blue Hachett Chop

Double Blue Gray Chopped

Golden Canadian

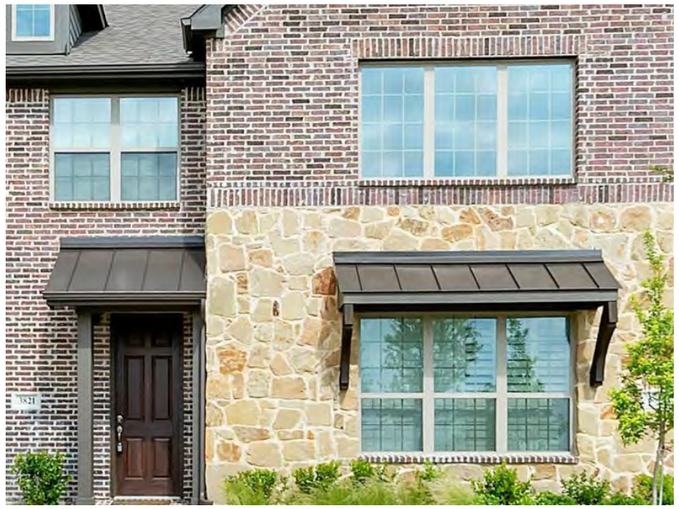
Sunray Tumbled

Sugarloaf Random

Blue Brown Wister Mix

Grayson Multi-height Tumbled

**All swatches acquired from local manufacture, and serve as a color guide only. Any substitutions must be approved by the ARC.



Burnished Slate

Koko Brown

Medium Bronze

Charcoal Gray

Light Stone

**All swatches acquired from local manufacture, and serve as a color guide only. Any substitutions must be approved by the ARC.

5.1 Standing Seam Metal Palette

Bamboo Shoot

Dark Clove

Foothills

Herbal Wash

Leather Bound

Zeus

Ligonier Tan

March Wind

Messenger Bag

Mossy Gold

Pier

Thunder Gray

Portabello

Prairie grass

Rock Bottom

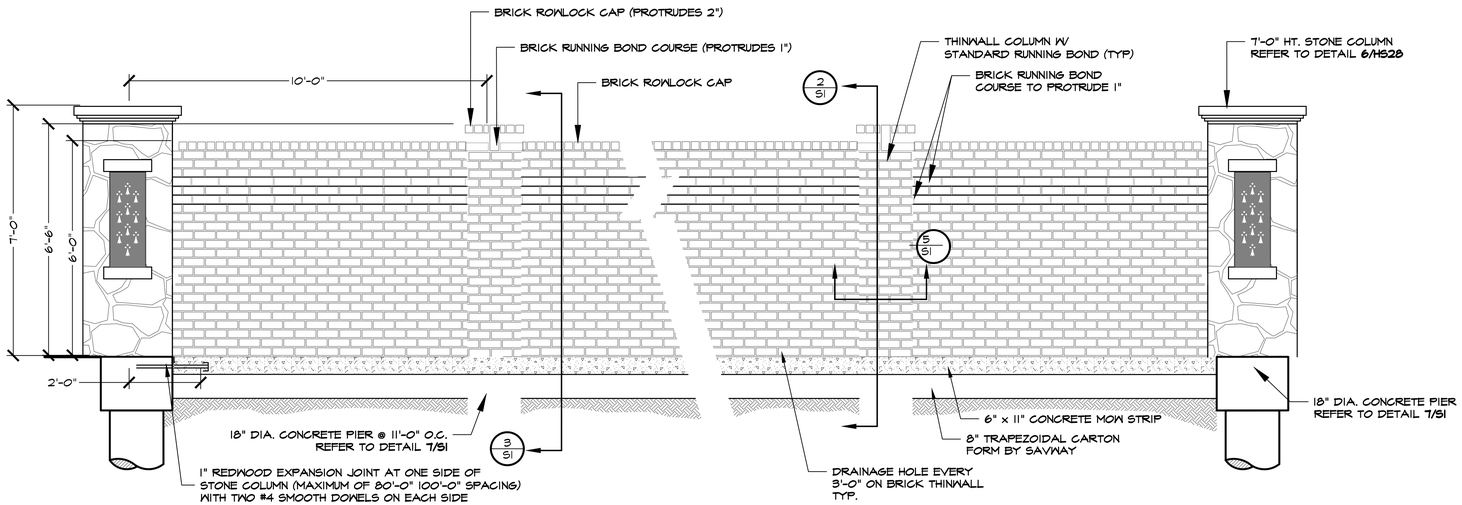
Stonebriar

Natural Linen

Willow Tree

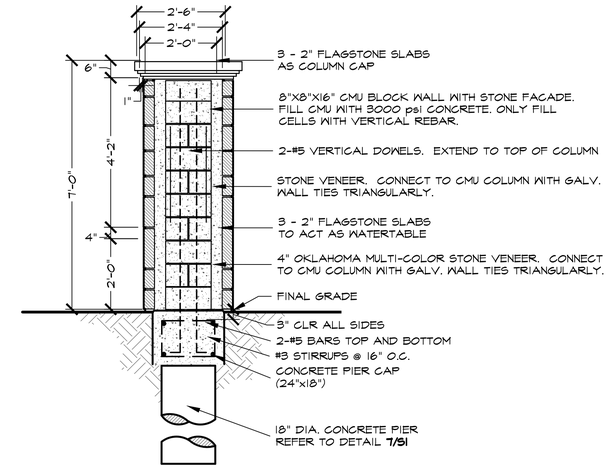
**All swatches acquired from Sherwin Williams, and serve as a color guide only. Any substitutions must be approved by the ARC.

5.1 Exterior Paint Palette



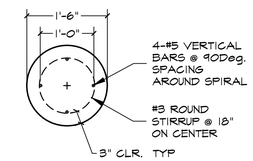
1/S1 6'-0" HT. BRICK THINWALL ELEVATION

SCALE: 1/2" = 1'-0"



6/S1 7'-0" STONE COLUMN SECTION

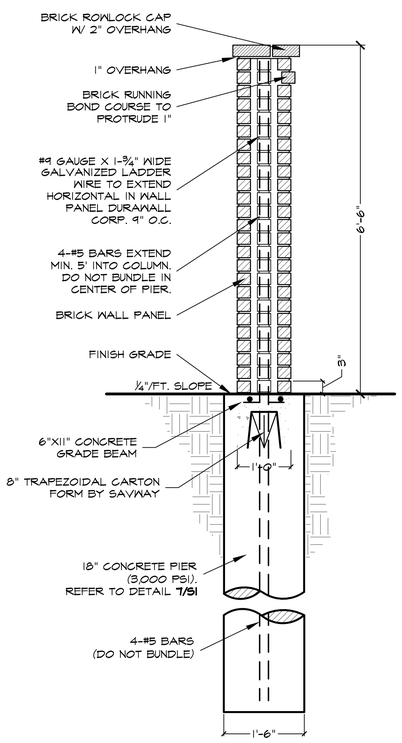
SCALE: 1/2" = 1'-0"



PLAN

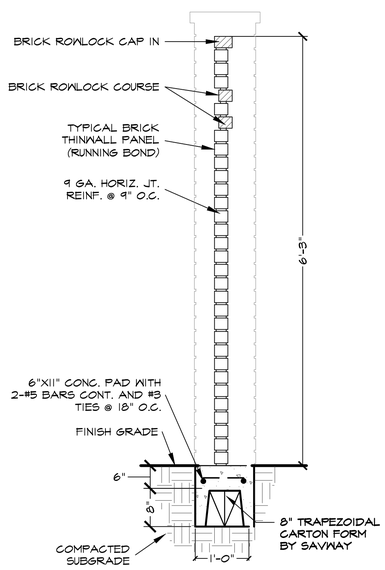
NOTE:
CONCRETE MOW STRIP SHALL BE CONTINUOUS THROUGH BRICK THINWALL COLUMN PIERS. CONTRACTOR SHALL PROVIDE AN EXPANSION JOINT AT EACH ENHANCED STONE COLUMN; NO MORE THAN 50'-0" O.C. MAXIMUM.

NOTE:
CONTRACTOR SHALL PROVIDE WEEP HOLES AND/OR BRICK LEAVE OUTS EVERY 5'-0" O.C. FOR DRAINAGE PURPOSES. OWNER SHALL MAINTAIN THESE OPENINGS TO PREVENT STANDING WATER AND HEAVING OF WALL PANELS.



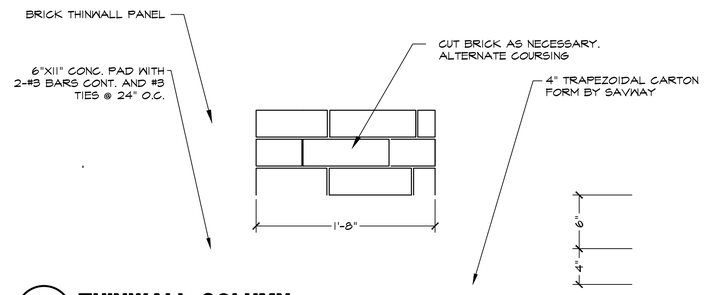
2/S1 THINWALL COLUMN SECTION

SCALE: 3/4" = 1'-0"



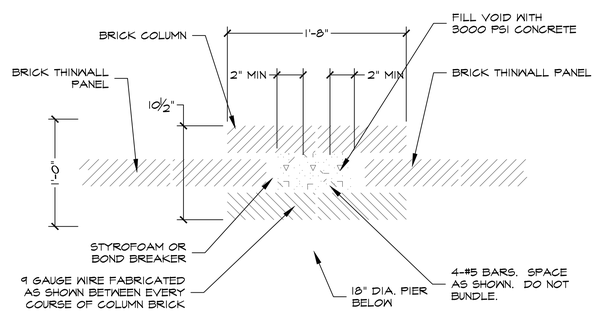
3/S1 ENHANCED BRICK THINWALL PANEL SECTION

SCALE: 3/4" = 1'-0"



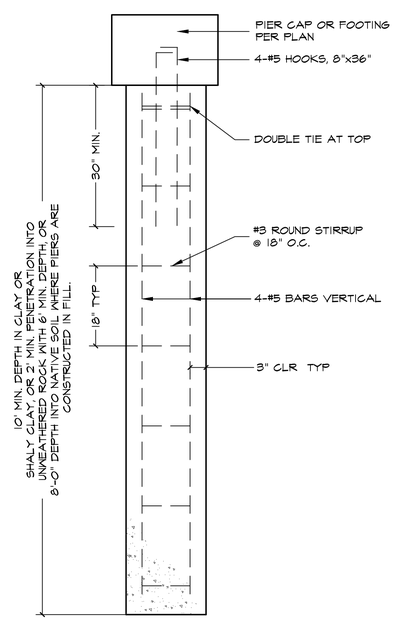
4/S1 THINWALL COLUMN ELEVATION

SCALE: 1-1/2" = 1'-0"



5/S1 THINWALL COLUMN PLAN/SECTION

SCALE: 1-1/2" = 1'-0"



SECTION

7/S1 PIER (18" DIA.) PLAN/SECTION

SCALE: 3/4" = 1'-0"

STUDIO 13 DESIGN GROUP

Studio 13 Design Group, P.L.L.C.
386 W. Main Street
Lewisville, Texas 75057
469-635-1900

TBAE Firm #BR643

2400 W. PIONEER PKWY
SUITE 130
PANTEGO TEXAS 76013
(817) 860-0166

Bar is one inch on original drawing. If not one inch on this sheet, adjust scale as necessary.

One Inch

LANDSCAPE AND SCREENING

Hardscape Details

Brighton at Mercer Crossing

City of Farmers Branch, Dallas County, Texas

#	PLAN REVIEW REVISIONS	BY	DATE
0			

PROJECT MOR002

SHEET S1 of X

Plotted by: ###### Plot Date: 10/3/2016 3:55 PM

Drawing: S:\Projects\MOR002-Mercer Crossing\DWG\Brighton\MOR002HS-Brighton.dwg Saved By: Colleen Save Time: 10/3/2016 3:53 PM

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-117

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.3

Consider approving Resolution No. 2016-117 for approval of a Detailed Site Plan for a 16.8 acre tract located east of Luna Road and south of Wittington Place; and take appropriate action.

BACKGROUND:

Earlier this year the City approved Planned Development No. 99. This zoning district established a new master planned community containing 267 acres extending from Mercer Crossing Lake to the levee west of Mercer Parkway. Within this new community the developer, Centurion American, proposes to create six (6) new single family residential neighborhoods. This proposed Detailed Site Plan is the second of these new residential neighborhoods. This neighborhood, to be known as "Ashington", contains 16.1 acres and proposes to create 60 single family lots.

RECOMMENDATION:

The Planning & Zoning Commission finds that this proposed Detailed Site Plan is in compliance with the Conceptual Site Plan and development standards included and outlined in Planned Development No. 99 (PD-99) as described in Ordinance No. 3359.

At their November 14th Regular Meeting, the Planning & Zoning Commission voted to recommend approval of this Detailed Site Plan as described in Resolution No. 2016-117.

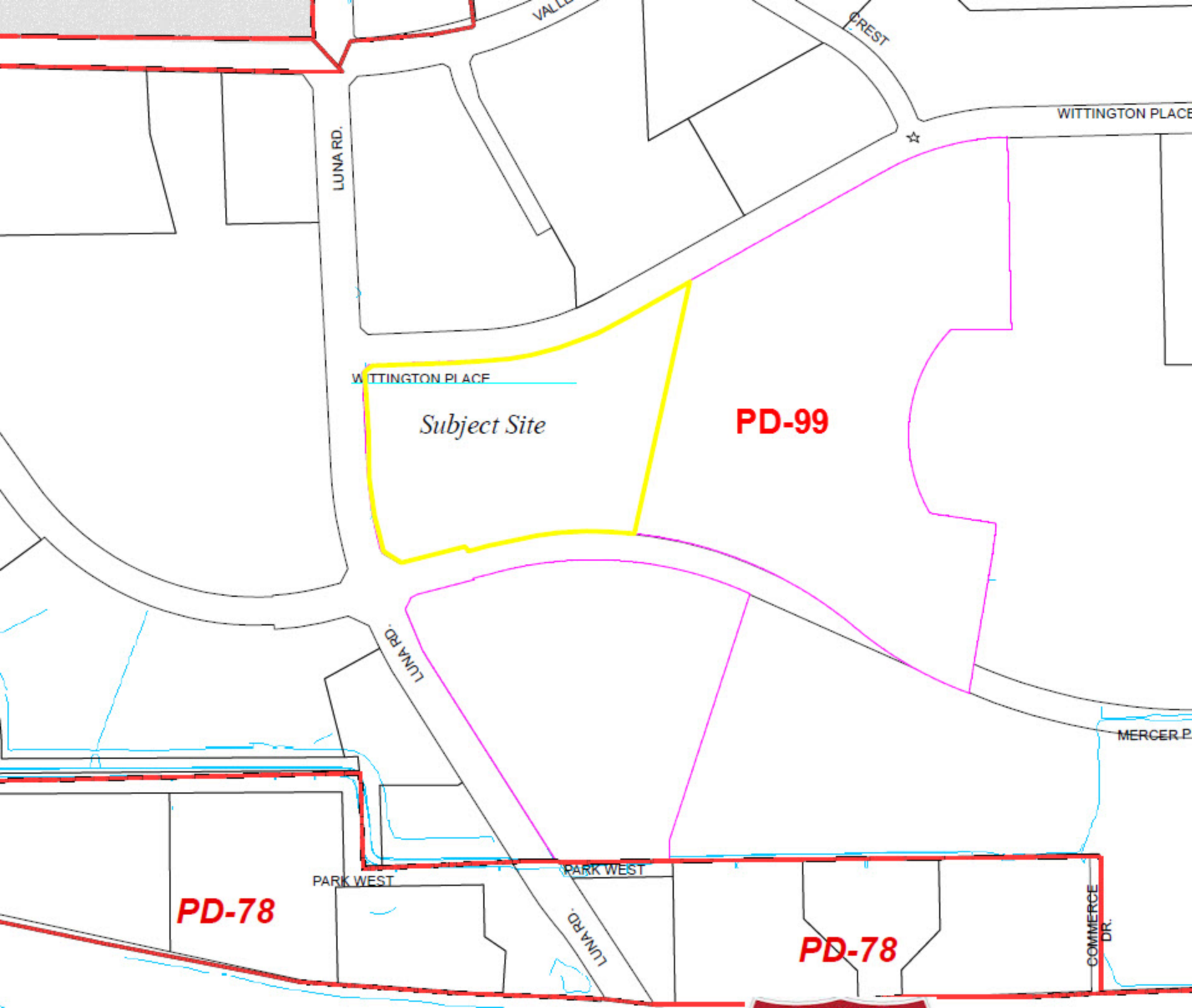
ACTIONS:

1. Motion to adopt Resolution No. 2016-117 as presented at this meeting.
2. Motion to adopt Resolution No. 2016-117 with the following modifications…
3. Motion to continue this case at the next regular meeting.

ATTACHMENTS:

1. Location Map
2. Aerial Map
3. Information Memorandum
4. PD-99 Conceptual Site Plan
5. Overall Mercer Crossing Plan
6. Neighborhood Map for Mercer Crossing
7. Resolution No. 2016-117
8. Wall Details

9. House Plans Examples


VALLE
CREST
WITTINGTON PLACE
LUNA RD.
WITTINGTON PLACE
Subject Site
PD-99
LUNA RD.
MERCER P
PARK WEST
PARK WEST
PD-78
LUNA RD.
PD-78
COMMERCE DR.

Parcel Property Boundaries

City Limit

16-SP-11 - Aerial Map
Ashington at Mercer Crossing

FARMERS BRANCH

Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data. For pictorial reference only.

0 462.5 925 Feet

NORTH

Document Path: Z:\Zoning Cases\2016 cases\16-SP-11 Mercer Crossing Ashington\GIS\Aerial Map.mxd

Date: 10/14/2016

Information MEMORANDUM

TO: Mayor and City Council

FROM: Charles S. Cox
City Manager

DATE: 12-5-2016

SUBJECT: Resolution No. 2016-117 approving a Detailed Site Plan for a single family detached neighborhood in PD-99

Summary

***Site design**:* *A 16.8 acre single family detached residential community*

Units: *60 buildable lots approximately 50'wide x105'deep*

Existing Conditions

In March of this year, the City approved Planned Development No. 99 (PD-99). This PD established a new master planned community containing residential, retail and entertainment land uses. This new master planned community contains approximately 267 acres and extends westward from Mercer Crossing Lake to the Valwood Improvement levee system west of Mercer Parkway. A Conceptual Site Plan was included within this new PD. This Conceptual Site Plan outlined the general land use areas and street network to be used for new community. Within this Conceptual Plan six single family neighborhoods were established. This Detailed Site Plan request represents one of those six single family neighborhoods. (See Neighborhood Map).

The site is located approximately east of Luna Road and immediately south of Wittington Place. (See Aerial Map)

For this 16.1 acres property, the applicant, CADG Mercer Crossing Holdings LLC (a subsidiary of Centurion American) has proposed to develop a single family detached residential community

containing approximately 60 buildable lots. This development is proposed to be constructed in one phase.

The site is bordered to the west by Luna Road and a proposed single family neighborhood known as “Verwood”. To the south of this site is proposed Mercer Parkway and a proposed single family neighborhood known as “Coventry”. To the east is another proposed single family neighborhood known as “Brighton”. To the north of the site is Wittington Place and a future retail center. (See Location Map).

Site Design

This Detailed Site Plan is for a proposed single family neighborhood (to be called “Ashington”) being developed by the applicant, Centurion American (CADG). Ashington will contain 16.1 total acres. It will be composed of 60 single family residential lots. All of these lots are rear loaded (driveways and garages facing the alleyway). These rear loaded lots will be a minimum of 50’ in width and 105’ in depth. All lots within the Ashington neighborhood meet or exceed 5,250 square feet in total area.

Mercer Crossing Design Guidelines (Pattern Book)

As part of the overall design of the Mercer Crossing mixed use development, CADG has developed a comprehensive set of Design Guidelines outlining the basic theme and character of the new community. This guideline document, or Pattern Book, includes design advice regarding such items as building architectural style (commercial and residential), street design, open space and parks design, trails, streetscape improvements, sign typology and standards, and wall materials and treatments. (see Mercer Crossing Pattern Book)

The proposed architectural theme of the Mercer Crossing community is “Texas Tutor”. This unique style is combination of key English Tudor building elements (such as field stone, large wooden timbers, and steep multi-gabled roof lines), with contemporary Texas style elements like brick and stone exteriors, metal roofs, large porches and oversized windows. Texas Tudor weaves these two vernacular styles into unified look for both the residential and commercial subdistricts of Mercer Crossing. This comprehensive Pattern Book gives all potential builders and property owners guidance on how to integrate their specific project into the Mercer Crossing community. (see Mercer Crossing Pattern Book)

House Designs and Elevations

As mentioned earlier, all lots within the Brighton neighborhood are at least 5,250 square feet in area. After the required setbacks, the buildable area will exceed 3,000 square feet. A sole homebuilder, Megatel Homes, plans to buy all the lots within Ashington. Megatel Homes is aware of the architectural design requirements within Mercer Crossing. Although the use of common Texas Tudor materials and architectural elements is encouraged, the Mercer Crossing design guidelines demand a variety of house designs be assembled throughout the neighbor. For example, no house plan and exterior can be repeated within 4 lots of the original design.

Megatel is proposing to build homes containing at least 2,500 square feet of living space. Most of the proposed house plans are 2 story in height (35' maximum), and contain more than 3,000 square feet. The estimated cost of these homes will range from $400,000 to $600,000. (See House Plans Examples)

Parking

All lots within Ashington will require at least a 2 car garage. In addition, the design of the driveway will include at least 2 more on site surface parking spaces. In addition, on street parking will be allowed on most local streets within Mercer Crossing to help accommodate visitor parking needs.

Parks, Open Space and Trails

The main park within Ashington is located on easternmost portion of the neighborhood. This park consists of approximately 2.54 acres and includes open play area, dog park, and a traditional playground. This park extends along the east side of the Thornhill Road, from Wittington Place to Mercer Parkway. An 8' wide concrete trail runs the entire length of the park connecting to Wittington and Mercer Parkway. Along this new trail will be streetscape improvements such as benches, streetlights, exercise stations, drinking fountains, and dog stations. New canopy trees will also be installed to provide shade and color along the trail and throughout the park. A small open space area is also proposed on the northwest corner of Thornhill Road and Mercer Parkway. (See Landscape Plan).

A high priority has been placed on pedestrian connectivity throughout the proposed new Mercer Crossing community. A comprehensive trail network system has been integrated into each of the proposed residential neighborhoods, tying them all together. As mentioned earlier the Ashington neighborhood has an 8' trail proposed along the eastside of Thornhill Road and connecting to the Brighton neighborhood to the east. In addition, a 12' wide trail will extend along the northern side of Mercer Parkway. An 8' wide trail will extend along the southern side of Wittington Place. A 6' wide sidewalk/trail is proposed along eastern side of Luna Road. All local streets will have 5' wide sidewalks.

All landscaped open space and trails will be maintained by the Mercer Crossing Homeowners Association (HOA).

Signage

CADG has developed a comprehensive signage typology for all of the Mercer Crossing community, both commercial and residential. A variety of entry signs are proposed on all 4 corners of the neighborhood. (See Signage Details in Landscape Plan and Pattern Book)

Walls

To help buffer the residential neighborhoods throughout the Mercer Crossing community, a special network of masonry walls has been designed. These masonry walls will follow the old English Tudor style, and be composed of both stone and brick. Special accent portions of the wall located at points of high visibility will be composed of stone, while other wall sections will be composed of a brick "thinwall" design (no precast concrete panels). A concrete foundation (designed by a structural engineer) will be poured for the base of all masonry wall sections. All masonry walls will be at least 6' in height. These wall are proposed along major sections of Wittington Place, Luna Road, and future Mercer Parkway (See Wall Sections in Landscape Plan).

All maintenance of the masonry walls and neighborhood signage will be responsibility of the Mercer Crossing Homeowners Association (HOA).

Streets

Thornhill Road will provide the only entry into the Ashington neighborhood. The northern entry will be from Wittington Place. The southern entry from Mercer Parkway. One additional loop street, named Ashington Trail, will serve the rest of the neighborhood. All local streets are designed to be 31' in width, and will allow on street parking in most areas. A series of three (3) alleys will also serve the neighborhood. These alley right of ways will be 20' in overall width and contain a 12'wide paved travelway.

All new street pavement (from curb to curb) will be maintained by the City upon acceptance of the street. All sidewalks and alleys will be maintained by the Mercer Crossing HOA. All street trees, landscaping, and street hardscape will be maintained by the Mercer Crossing HOA.

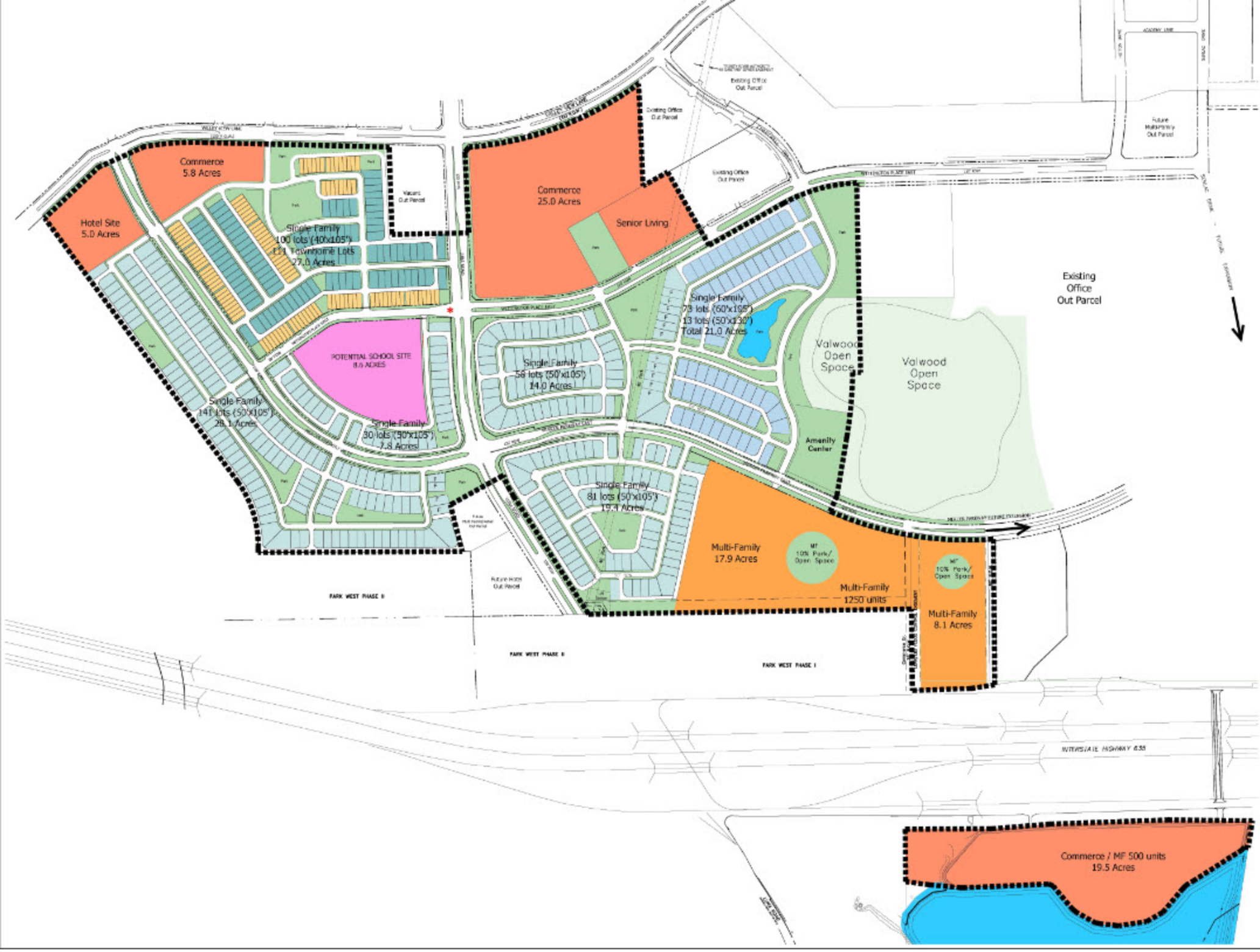
Conclusion

The Ashington neighborhood proposed with this Detailed Site Plan is consistent with Planned Development No. 99 (PD-99) and the associated Conceptual Site Plan as described in Ordinance No. 3359.

On November 14th, 2016 the Planning & Zoning Commission voted to recommend approval of this Detailed Site Plan as described in Resolution No. 2016-117.

<u>Possible Council Action:</u>

1. I move to adopt Resolution No. 2016-117
2. I move to adopt Resolution No. 2016-117 with the following modification(s)…
3. I move to table the item or take no action.



Legend

Single Family 60'x105' lots	73 lots
Single Family 50'x130' lots	13 lots
Single Family 50'x105' lots	310 lots
Single Family 40'x105' lots	100 lots
Townhomes 25'x90' lots	111 lots
Multi-Family (Includes O.S.)	26.0 Acres
Commerce/ Hotel/Sr. Living	55.3 Acres
Potential School Site	8.6 Acres
Park / Linear Park Amenity Center/ Valwood OS (inside)	26.4 Acres
Valwood Open Space (Outside)	31.2 Acres
Water Area	
Zoning Boundary	

F Front-Load Lot

* Final alignment of Wittington and Luna intersection to be addressed during street design.

NOTICE:
Acreages, land uses, lot yields, road alignments, park/open spaces and trails are illustrative in nature and may change due to final surveys, field conditions and environmental findings, utilities, final site plans, and City of Farmers Branch and other governmental agency reviews and approvals. Ion Design Group, LLC is not responsible for loss of lots and land use changes due to these conditions. Owner reserves right to modify land-use allocations and densities by ±10%.

0 200 400

Mercer Crossing Layout

CITY OF FARMERS BRANCH DALLAS COUNTY TEXAS

Ion Design Group

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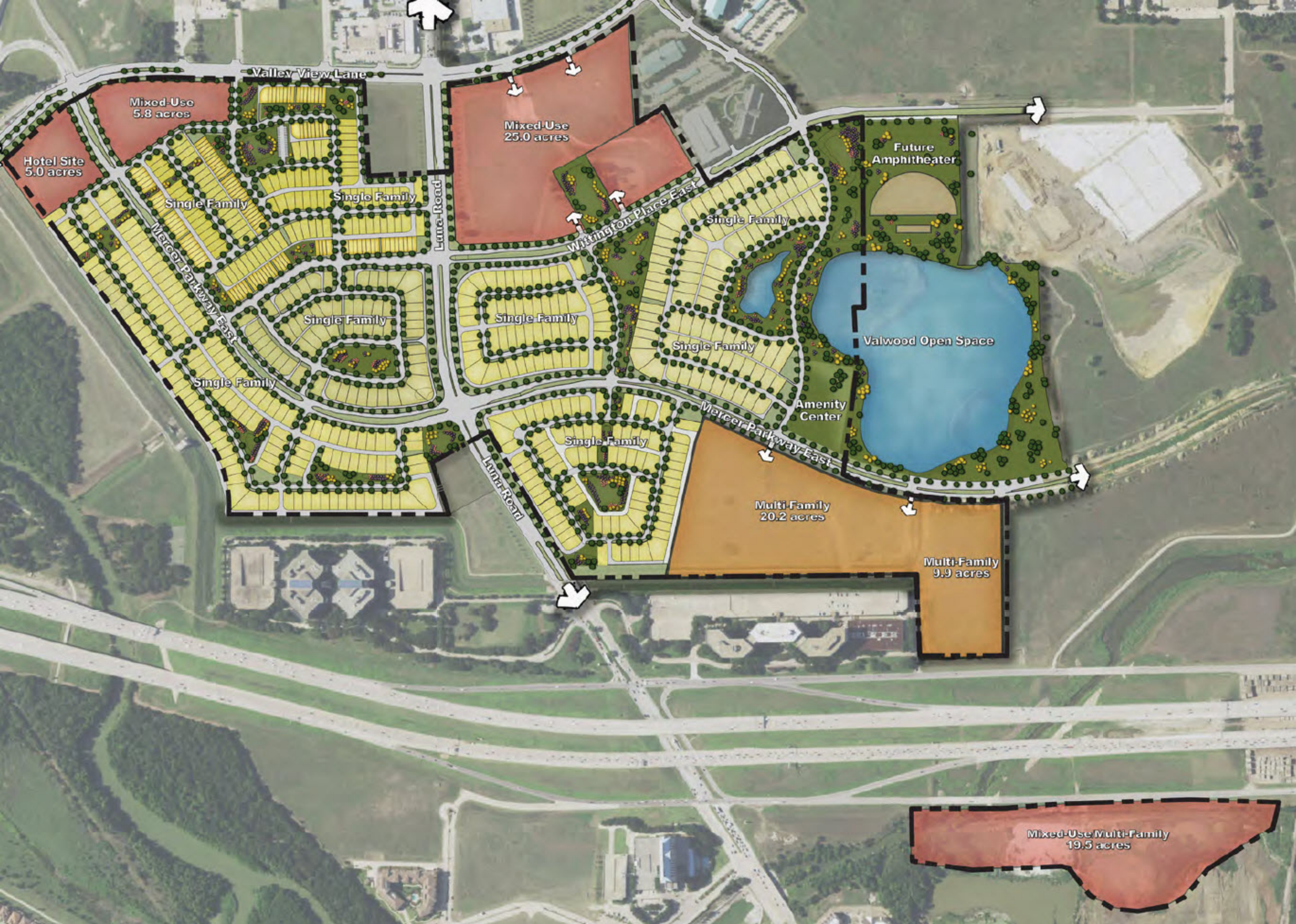

Valley View Lane
Mixed-Use
5.8 acres
Hotel Site
5.0 acres
Mixed-Use
25.0 acres
Future
Amphitheater
Single Family
Single Family
Luna Road
Mercer Parkway East
Wittington Place East
Single Family
Single Family
Single Family
Single Family
Single Family
Valwood Open Space
Single Family
Amenity
Center
Mercer Parkway East
Single Family
Luna Road
Multi-Family
20.2 acres
Multi-Family
9.9 acres
Mixed-Use Multi-Family
19.5 acres

WINDERMERE
VERWOOD
ASHINGTON
BRIGHTON
AMESBURY
COVENTRY

RESOLUTION NO. 2016-117

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, APPROVING A DETAILED SITE PLAN AND RELATED DETAILED REGULATIONS FOR DEVELOPMENT OF A 16.803± ACRE TRACT OUT OF BLOCK D, WESTSIDE ADDITION SECTION 1, CITY OF FARMERS BRANCH, TEXAS DESCRIBED IN EXHIBIT "A" HERETO, LOCATED IN PLANNED DEVELOPMENT NO. 99 (PD-99); AND PROVIDING AN EFFECTIVE DATE

WHEREAS, an application has been made for approval of detailed site plan for a 16.803± acre tract out of Block D, Westside Addition Section 1, City of Farmers Branch, Texas, described in Exhibit "A" attached hereto and incorporated herein by reference ("the Property"), which is located in Planned Development No. 99 (PD-99); and

WHEREAS, having received the recommendation of the Planning and Zoning Commission that the detailed site plan and associated drawings, including, but not limited to, landscape plan, and building elevations, should be approved as requested, the City Council of the City of Farmers Branch, in the exercise of the legislative discretion, has concluded that the requested site plan for the Property should be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The Property shall be developed in accordance with the regulations applicable to the Property as set forth in Ordinance No. 3359 ("the PD-99 Ordinance") as well as the following regulations:

A. **Detailed Site Plan**: The Property shall be developed substantially as set forth in the Detailed Site Plan attached hereto as Exhibit "B" and incorporated herein by reference ("the Site Plan"); provided, minor changes in location of streets and alleys may be made without further amendment to the Site Plan as long as the general pattern of traffic circulation and access is substantially maintained.

B. **Landscape**:

(1) The common areas, open spaces, street medians, and dedicated landscape easements (if any) developed on the Property shall be landscaped substantially in accordance with the Landscape a Plan set forth in Exhibit "C," attached hereto and incorporated herein by reference ("the Landscape Plan"). All required landscaping to be planted within common areas, open spaces, street medians, and dedicated landscape easements as shown on the Landscape Plan must be completed prior to issuance of a certificate of occupancy for any building constructed within the Property; provided, however, model homes used solely for sales office purposes may be constructed.

(2) Individual residential lots shall be landscaped substantially in accordance with the provisions related to landscaping in the Pattern Book (as defined in Section 1.C, below). Installation of all required landscaping for individual residential lots shall be completed before the issuance by the City of a Certificate of Occupancy or Certificate of Completion for the dwelling unit constructed on said

C. **Building Design, Elevations, and Diversity**: All buildings constructed on the Property shall be designed and constructed in substantial conformity with the architectural styles and materials set forth in the Pattern Book. At least three lots must separate dwelling units constructed with the same front building elevation, which separation shall apply to both the same side of the street and across the street.

D. **Entry Signs**: Entry signs and related landscaped and structural features shall be constructed at the locations shown on the Site Plan and designed and constructed as shown on the Entry Sign Plan attached hereto as Exhibit "D" and incorporated herein by reference.

E. **Street Design**: Streets constructed within the Property shall be designed, constructed, and landscaped substantially in accordance with the Street Cross Sections attached hereto as Exhibit "E" and incorporated herein by reference.

F. **Parks and Trails**: Pedestrian trails, open spaces, and neighborhood parks shall be developed substantially in accordance with the Site Plan and the Parks Plan attached hereto as Exhibit "F" and incorporated herein by reference. No more than thirty (50) building permits shall be issued for dwelling units constructed on lots within the Property prior to completion of construction of all parks, open spaces, and trails required by this resolution.

G. **Screening Walls**: Screening walls shall be constructed at the locations shown on the Site Plan in accordance with the designs set forth in this resolution. Construction of all screening walls shall be completed prior to issuance of a certificate of occupancy for the first dwelling unit constructed on the Property other than model homes used solely for sales office purposes.

H. **Pattern Book**: For purpose of this resolution, the phrase "Pattern Book" means Volume II "Pattern Book" of the *Mercer Crossing Design Guidelines* (Draft Four – November 7, 2016) prepared by G&A Consultants, LLC, ("the Pattern Book"), a copy of which is on file in the Office of the City Secretary and incorporated as if fully set forth herein by reference to the date and number of this resolution.

I. **Relationship to PD-99 Ordinance**: In accordance with the provisions of the PD-99 Ordinance, upon its effective date, this resolution shall constitute additional regulations governing the use and development of the Property as if they were originally adopted as part of the PD-99 Ordinance; provided, however, in the event of any irreconcilable conflict between this resolution, including, but not limited to, the Pattern Book, and the PD-99 Ordinance, the provisions in the PD-99 Ordinance shall control.

SECTION 2. This resolution shall become effective immediately upon its approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:12/4/16:81995)

Resolution No. 2016-117
Exhibit "A" – Description of Property

A tract of land out of the Francis Miller Survey, Abstract No. 926 and situated in the City of Farmers Branch, Dallas County, Texas, and surveyed by Miller Surveying, Inc. of Hurst, Texas in November 2015, said tract being a portion of Block D, Westside Addition Section 1, an addition to the City of Farmers Branch according to the plat recorded as Document No. 200600172708 of the Real Property Records of Dallas County, Texas, Texas and being more particularly described by metes and bounds as follows:

Beginning at a 1/2 inch "MILLER 5665" capped steel rod for the most westerly northwest corner of said Block D, said rod being the southeasterly end of a corner clip for the easterly right-of-way line of Luna Road and the southerly right-of-way line of Wittington Place;

Thence North 42 degrees 27 minutes 18 seconds East with said corner clip a distance of 35.25 feet to a 1/2 inch capped steel rod found for the northeasterly corner thereof;

Thence North 87 degrees 37 minutes 23 seconds East with the northerly boundary line of said Block D and with said southerly right-of-way line a distance of 399.76 feet to a 1/2 inch "MILLER 5665" capped steel rod set for the beginning of a curve to the left with a radius of 1096.32 feet and whose chord bears North 74 degrees 07 minutes 23 seconds East at 511.86 feet;

Thence easterly continuing with said northerly boundary line and said southerly right-of-way line and with said curve along an arc length of 516.63 feet to a 1/2 inch "MILLER 5665" capped steel rod set for the end of said curve;

Thence South 11 degrees 52 minutes 52 seconds West a distance of 149.74 feet to a 1/2 inch "MILLER 5665" capped steel rod set;

Thence South 12 degrees 25 minutes 13 seconds East a distance of 775.55 feet to a 1/2 inch "MILLER 5665" capped steel rod set in the southerly boundary line of said Block D, said rod being in the northerly right-of-way line of Mercer Parkway and also being in a curve to the left with a radius of 1450.00 feet and whose chord bears South 85 degrees 41 minutes 39 seconds West at 512.90 feet;

Thence westerly with said northerly right-of-way line and with said curve along an arc length of 515.62 feet to a 1/2 inch capped steel rod found for the end of said curve;

Thence South 75 degrees 30 minutes 25 seconds West continuing with said northerly right-of-way line a distance of 92.74 feet to a 1/2 inch capped steel rod found;

Thence North 14 degrees 29 minutes 35 seconds West continuing with said northerly right-of-way line a distance of 16.50 feet to a 1/2 inch capped steel rod found;

Thence South 75 degrees 30 minutes 25 seconds West continuing with said northerly right-of-way line a distance of 223.49 feet to a 1/2 inch capped steel rod found;

Thence South 84 degrees 00 minutes 42 seconds West continuing with said northerly right-of-way line a distance of 16.63 feet to a 1/2 inch capped steel rod found for the southerly end of a corner clip for said northerly right-of-way line and the easterly right-of-way line of Luna Road;

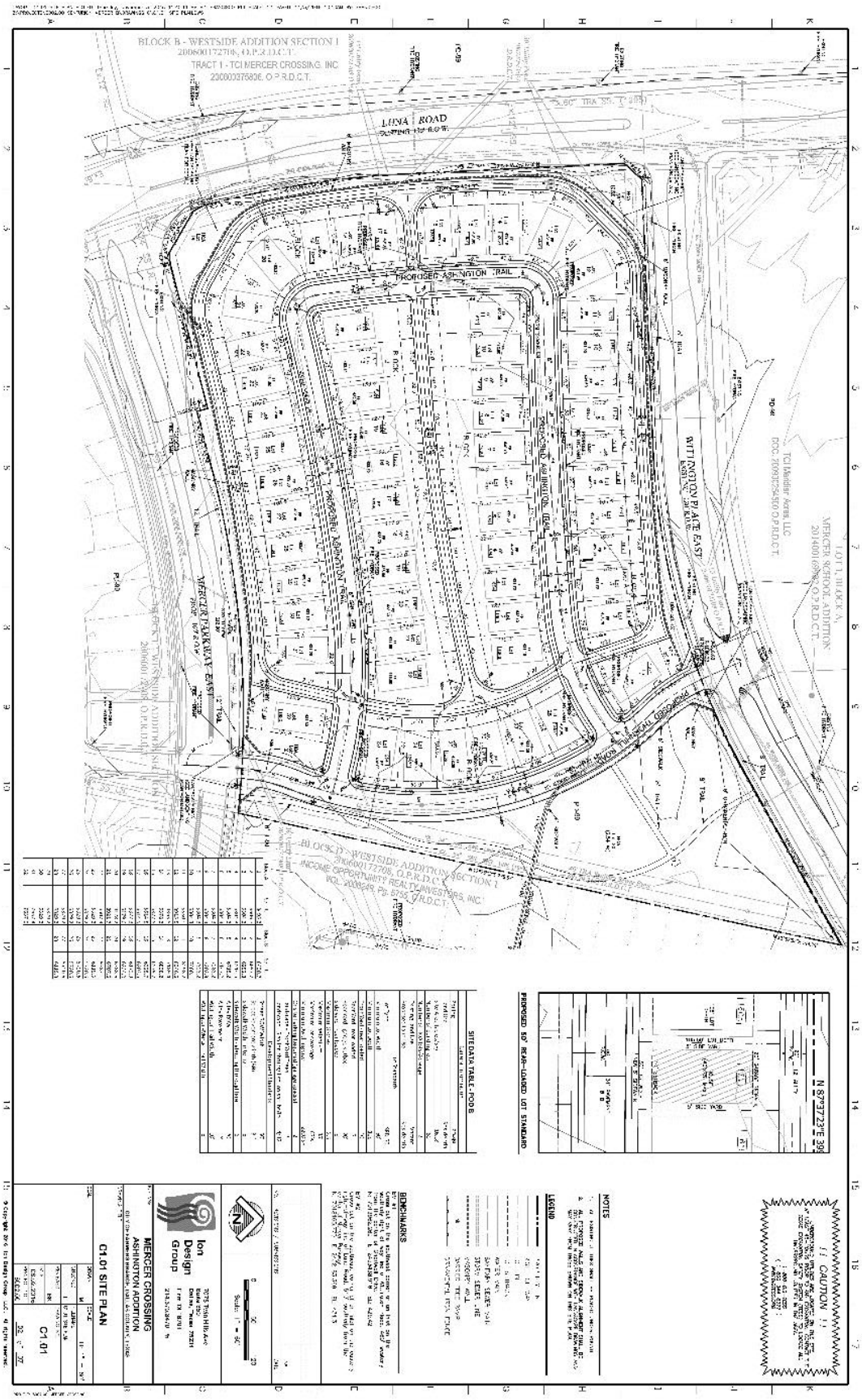
Thence North 59 degrees 44 minutes 56 seconds West with said corner clip a distance of 72.43 feet to a 1/2 inch capped steel rod found for the northerly end thereof;

Thence North 28 degrees 19 minutes 37 seconds West with said easterly right-of-way line a distance of 17.61 feet to a 1/2 inch capped steel rod found for the beginning of a curve to the right with a radius of 1460.00 feet and whose chord bears North 08 degrees 42 minutes 32 seconds West at 310.09 feet;

Thence northerly with said easterly right-of-way line and with said curve along an arc length of 310.68 feet to a 1/2 inch capped steel rod found for the end of said curve;

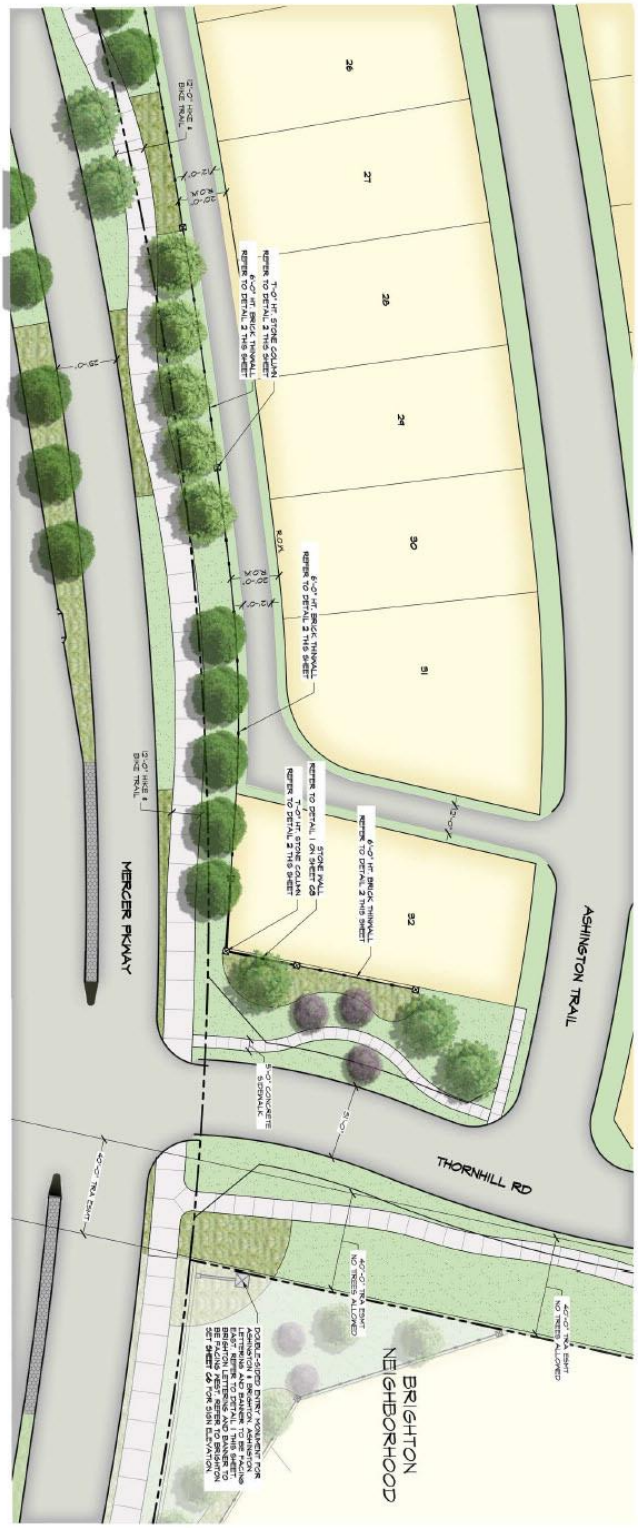
Thence North 02 degrees 42 minutes 47 seconds West continuing with said easterly right-of-way line a distance of 323.61 feet to the point of beginning and containing 16.803 acres of land, more or less.

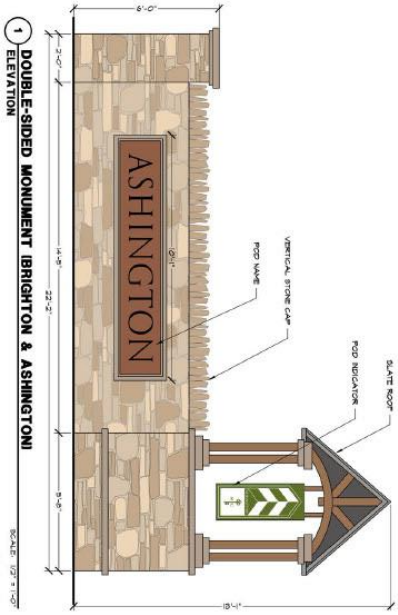
Resolution No. 2016-117
Exhibit "B" – Detailed Site Plan



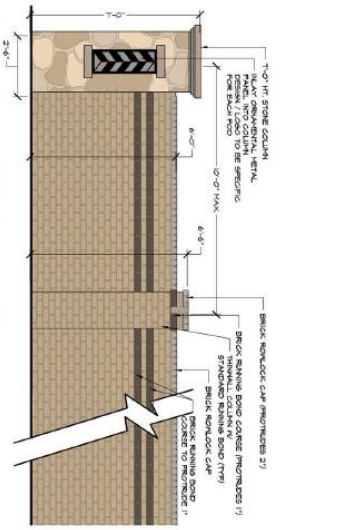
Resolution No. 2016-117
Exhibit "C" – Landscape Plan

Resolution No. 2016-117
Exhibit "D" – Entry Sign Plans





1 DOUBLE-SIDED MONUMENT (BRIGHTON & ASHINGTON)
ELEVATION
SCALE: 1/2" = 1'-0"



2 6'-0" HT. BRICK THINWALL W/ COLUMN
ELEVATION
SCALE: 1/2" = 1'-0"

NOTE:
ALL IMPROVEMENTS SHOWN ON THIS PLAN ARE CONCEPTUAL IN NATURE & SUBJECT TO CHANGE

NORTH

1" = 20' = 0"

For a set plan on original 24x36 sheet, plot at full scale. Adjust output scale as necessary.

Date Issued

ASHINGTON AT MERCER CROSSING
~CONCEPTUAL LAYOUT PLAN~

CITY OF FARMERS BRANCH
DALLAS COUNTY, TEXAS

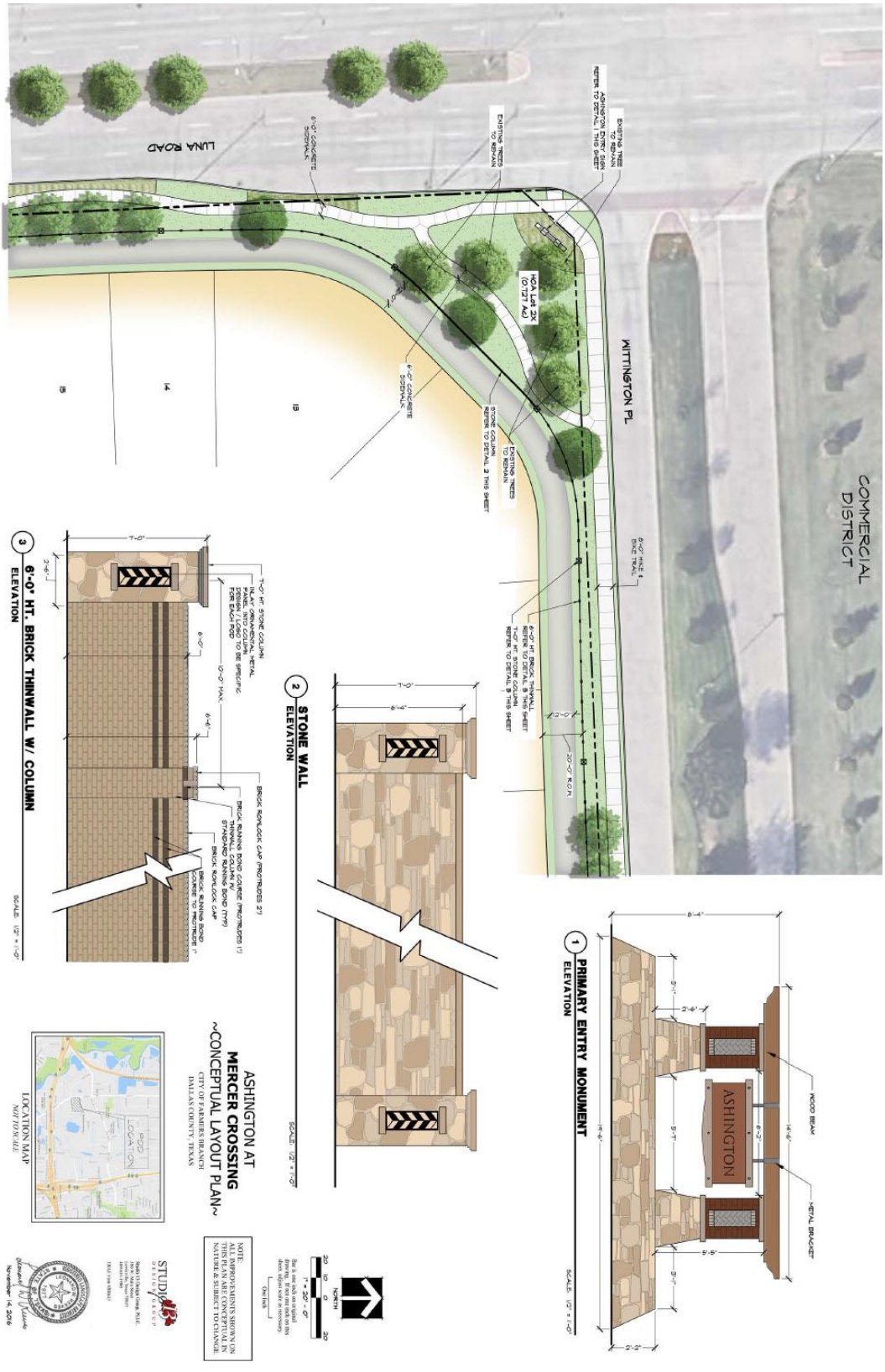
LOCATION MAP
NOT TO SCALE

STUDIO 360 DESIGN GROUP

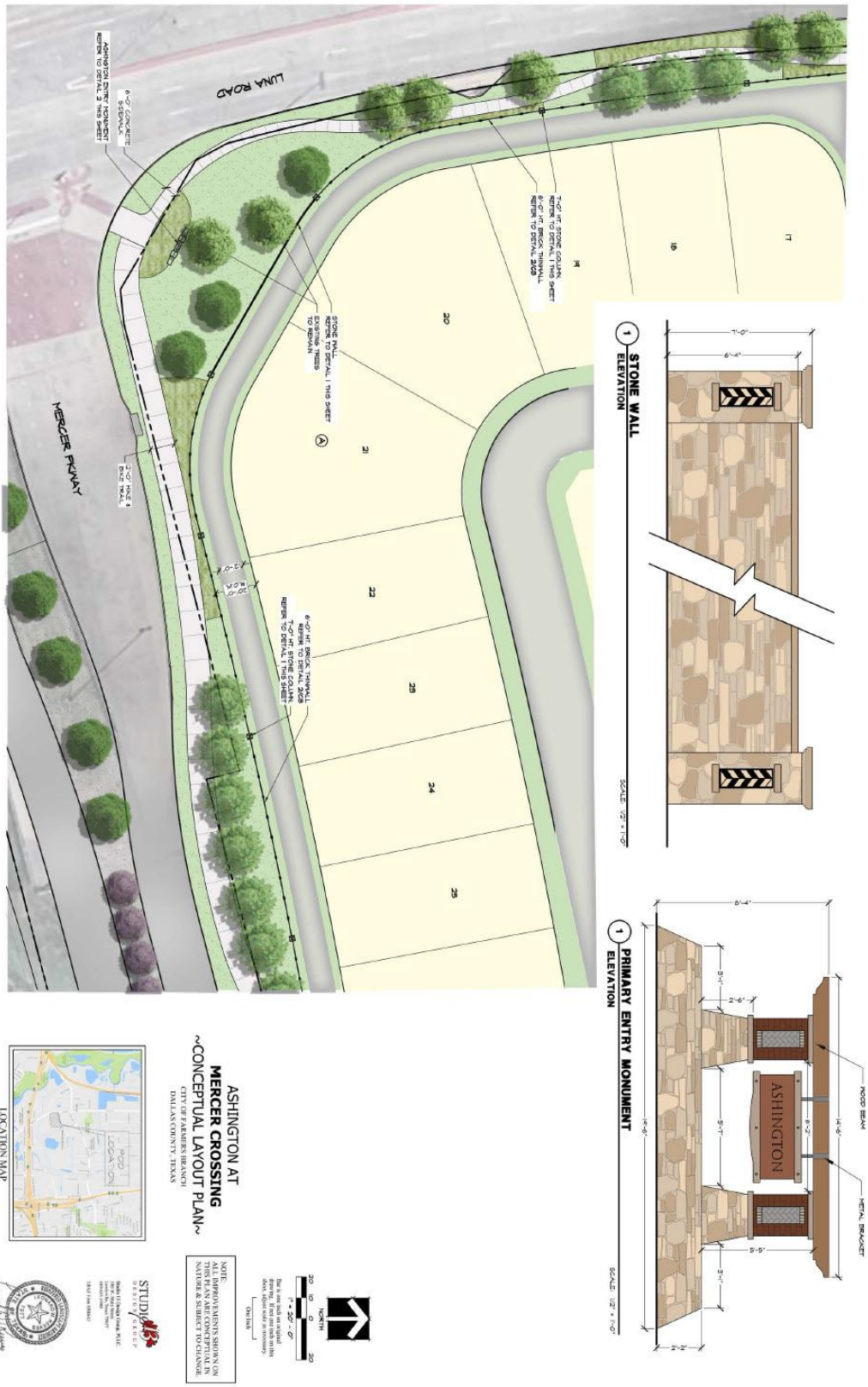
Studio 360 Design Group, PLLC
3309 W. Mockingbird Lane
Dallas, Texas 75235
(214) 1-360-360(x2)

Schematic Design
November 14, 2016

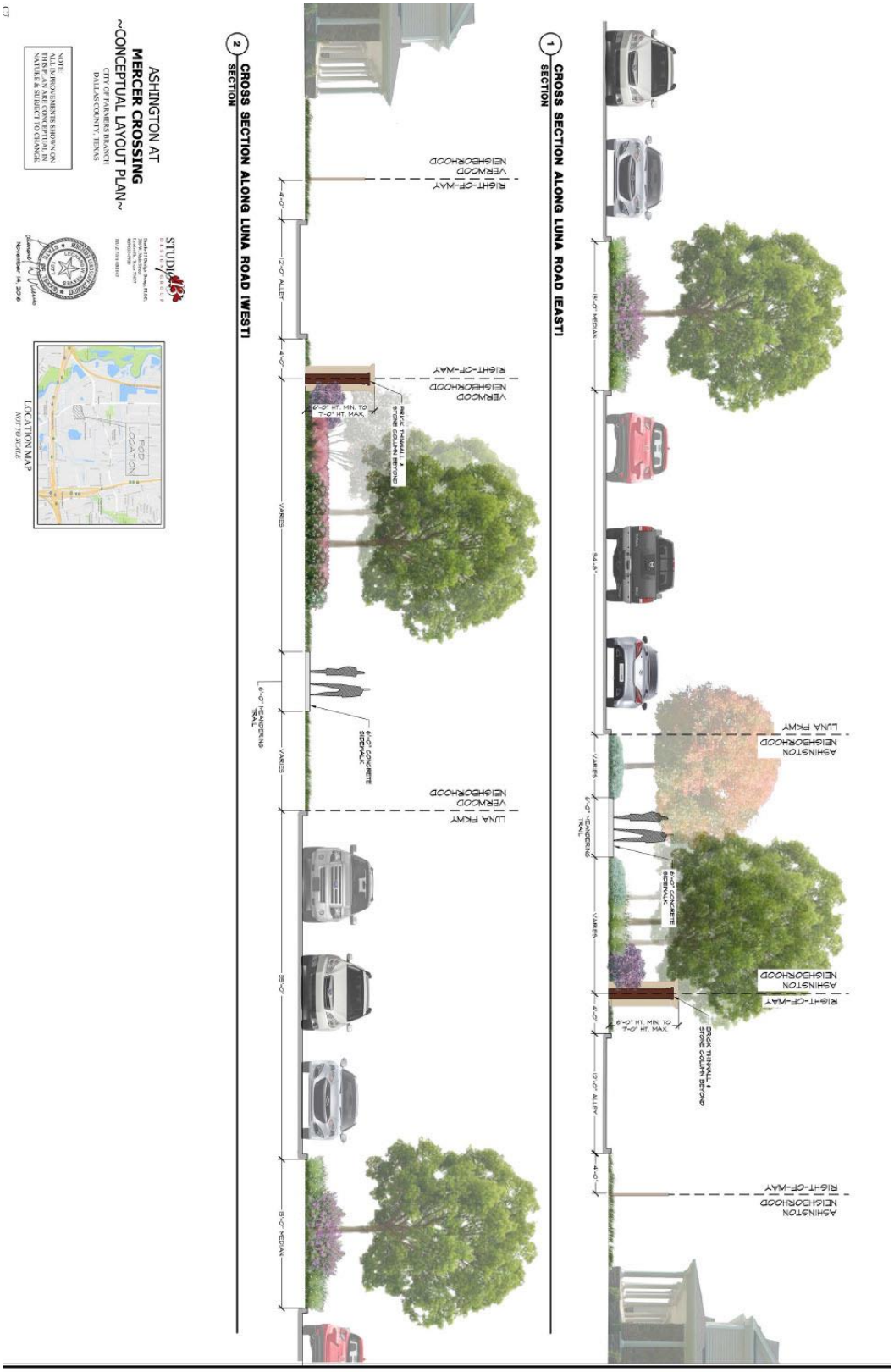
Resolution No. 2016-117
Exhibit "D" – Entry Sign Plans (cont.)



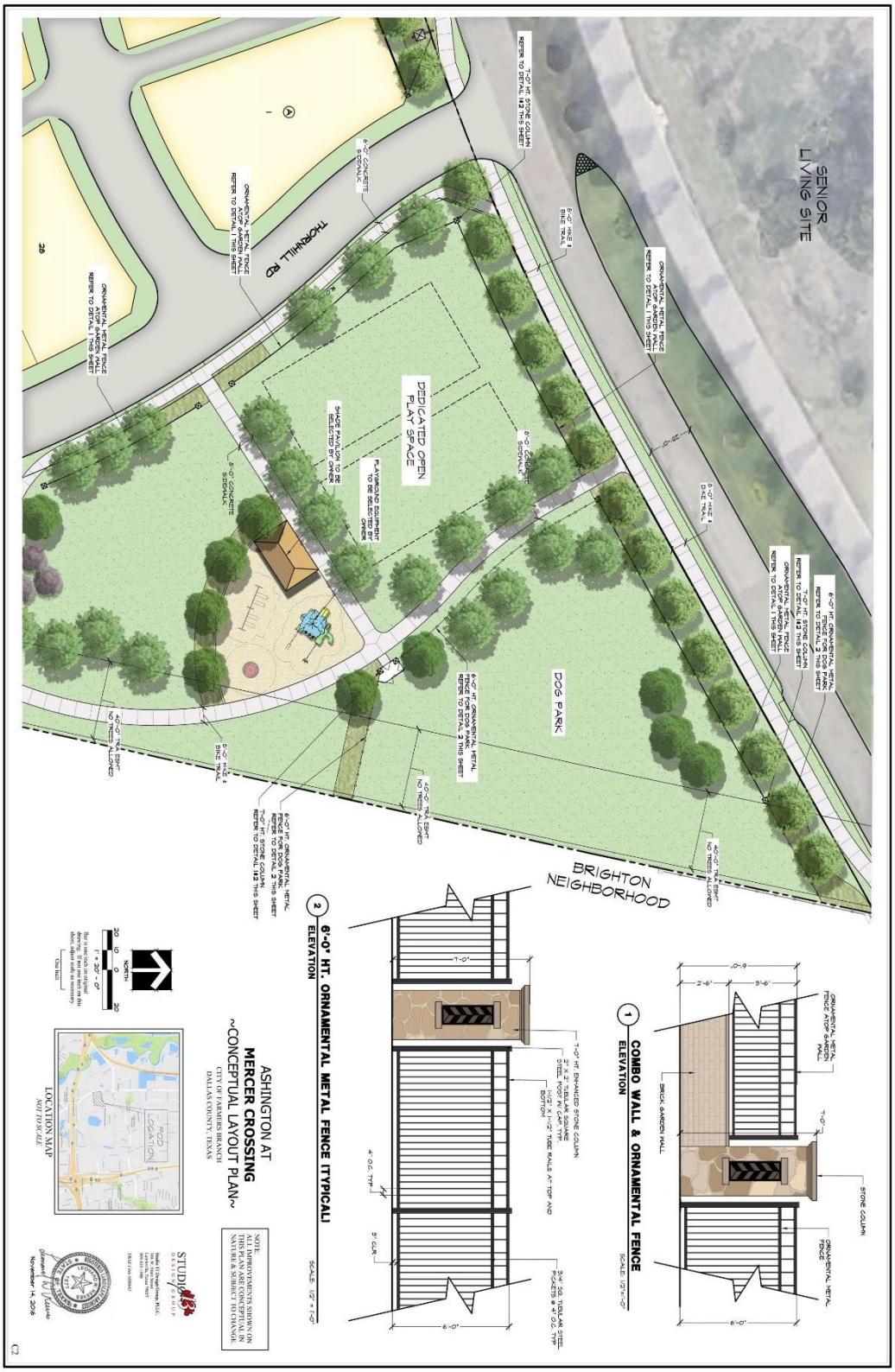
Resolution No. 2016-117
Exhibit "D" – Entry Sign Plans (cont.)

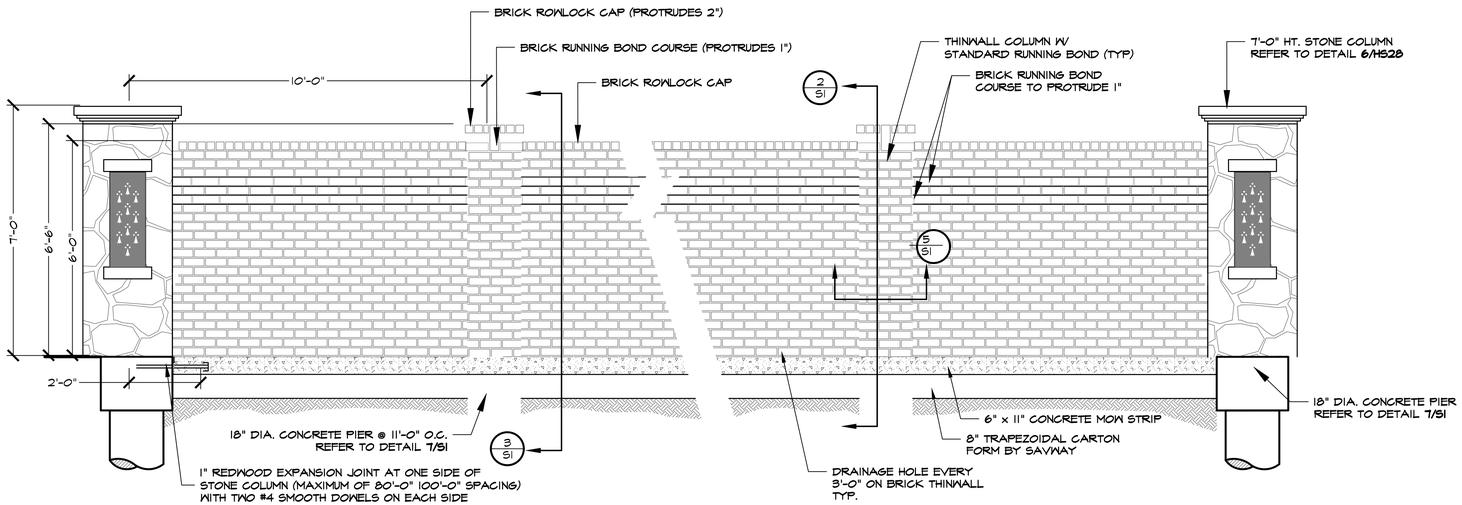


Resolution No. 2016-117
Exhibit "E" – Street Cross-Sections



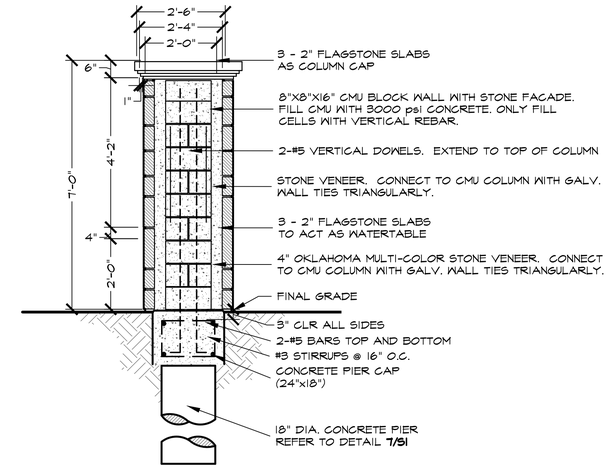
Resolution No. 2016-117
Exhibit "F" – Park and Open Space Plan





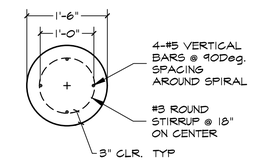
1/S1 6'-0" HT. BRICK THINWALL ELEVATION

SCALE: 1/2" = 1'-0"



6/S1 7'-0" STONE COLUMN SECTION

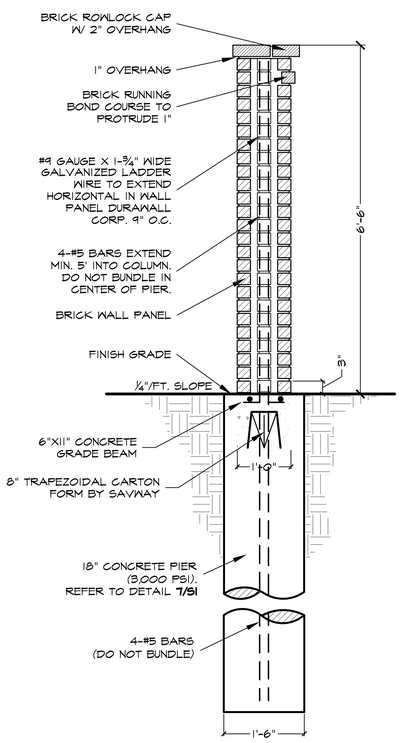
SCALE: 1/2" = 1'-0"



PLAN

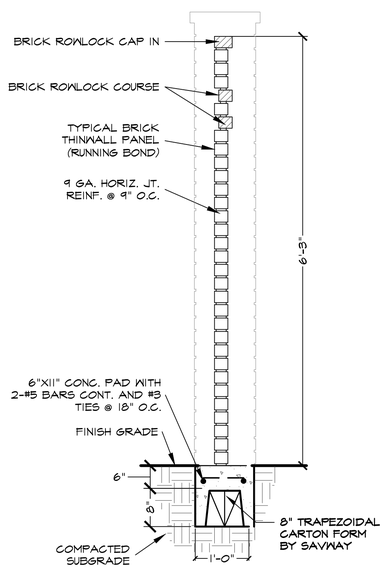
NOTE:
CONCRETE MOW STRIP SHALL BE CONTINUOUS THROUGH BRICK THINWALL COLUMN PIERS. CONTRACTOR SHALL PROVIDE AN EXPANSION JOINT AT EACH ENHANCED STONE COLUMN; NO MORE THAN 50'-0" O.C. MAXIMUM.

NOTE:
CONTRACTOR SHALL PROVIDE WEEP HOLES AND/OR BRICK LEAVE OUTS EVERY 5'-0" O.C. FOR DRAINAGE PURPOSES. OWNER SHALL MAINTAIN THESE OPENINGS TO PREVENT STANDING WATER AND HEAVING OF WALL PANELS.



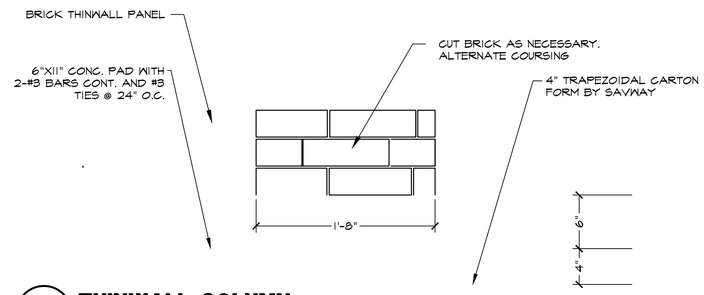
2/S1 THINWALL COLUMN SECTION

SCALE: 3/4" = 1'-0"



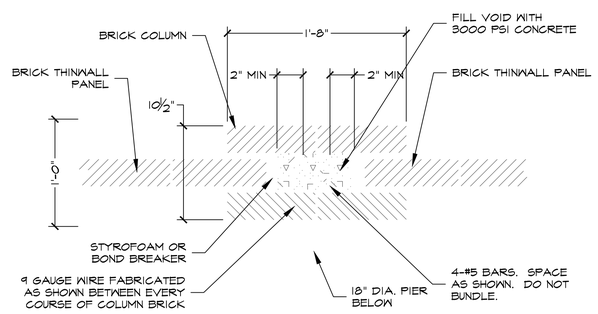
3/S1 ENHANCED BRICK THINWALL PANEL SECTION

SCALE: 3/4" = 1'-0"



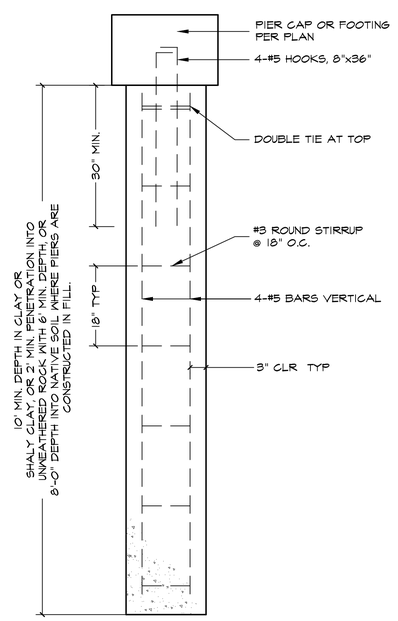
4/S1 THINWALL COLUMN ELEVATION

SCALE: 1-1/2" = 1'-0"



5/S1 THINWALL COLUMN PLAN/SECTION

SCALE: 1-1/2" = 1'-0"



SECTION

7/S1 PIER (18" DIA.) PLAN/SECTION

SCALE: 3/4" = 1'-0"

STUDIO 13 DESIGN GROUP

Studio 13 Design Group, P.L.L.C.
386 W. Main Street
Lewisville, Texas 75057
469-635-1900

TBAE Firm #BR643

2400 W. PIONEER PKWY
SUITE 130
PANTEGO TEXAS 76013
(817) 860-0166

Bar is one inch on original drawing. If not one inch on this sheet, adjust scale as necessary.

One Inch

LANDSCAPE AND SCREENING

Hardscape Details

Brighton at Mercer Crossing

City of Farmers Branch, Dallas County, Texas

#	PLAN REVIEW REVISIONS	BY	DATE
0			

PROJECT MOR002

SHEET S1 of X

Plotted by: ###### Plot Date: 10/3/2016 3:55 PM

Drawing: S:\Projects\MOR002-Mercer Crossing\DWG\Brighton\MOR002HS-Brighton.dwg Saved By: Colleen Save Time: 10/3/2016 3:53 PM

House Plan Examples

The above image sets an ideal standard for the Texas Tudor Design theme. The chimney detail, brick patterns, and color palette are all strong architectural elements.

In this image the half timbering and multi-paned windows are the highlighted Texas Tudor elements to replicate.

The brick detailing and standing seam accents make this a great rear entry example.

The image above is an excellent variation of the top left elevation. By varying colors of materials the same look can easily be accomplished.

There are very few front entry lots in Mercer Crossing, but this is a prime example to be used. The brick details, half timbering inlay reinforce the Texas Tudor style.

This is another great front entry elevation. The intricate detail on the chimney and the use of native materials are the very definition of Texas Tudor.

The multiple Texas Tudor elements include: eyebrow windows, cedar shutters, herringbone brick details, and native building materials.

The above townhome elevation includes Standing seam accents, multi-paned windows, half timbering, and an acceptable color palette.

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-118

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.4

Consider approving Resolution No. 2016-118 amending the Policy Statement on Local Economic Development and Business Incentives for the demolition rebuild program; and take appropriate action.

BACKGROUND:
Chapter 380 of the Texas Local Government Code authorizes the City to provide incentives consisting of loans and grants of city funds, use of city personnel, facilities and services with or without charge, for the promotion of economic development. The availability of quality housing stock in the City of Farmers Branch encourages the relocation of businesses, attracts new businesses, and promotes expansion of existing businesses to and within the City, all of which in turn will stimulate growth, create jobs, and increase property and sales tax revenues. To assist in this endeavor, a Demolition/Rebuild Program was established in 2009 pursuant to Chapter 380 of the Texas Local Government Code to encourage the redevelopment of existing one-family detached residential properties with the construction of new, higher value, one-family detached residential structures.

DISCUSSION:
At the November 15 City Council Study Session, staff made a presentation regarding the current status of the Demolition/Rebuild Incentive Program including suggestions for enhancements. Ultimately, direction was given to increase the demolition incentive from $5,000 to $12,500 for houses valued over $100,000, and to $15,000 for those under $100,000. Additionally, to help balance the increase in increased demolition incentives, it was suggested to limit the number of years of tax rebates from seven (7) years to five (5).

RECOMMENDATION:
Staff recommends approving Resolution No. 2016-118 amending the Policy Statement on Local Economic Development and Business Incentives for the demolition rebuild program.

POSSIBLE COUNCIL ACTION:
1. I move to approve .....
2. I move to approve ....., with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:
1. Resolution 2016-118

RESOLUTION NO. 2016 - 118

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ADOPTING AMENDMENTS TO THE RESIDENTIAL DEMOLITION/REBUILD INCENTIVE PROGRAM; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Texas Local Government Code Chapter 380 allows the City to provide incentives for the promotion of economic development; and

WHEREAS, the promotion of the redevelopment of existing housing stock in the City promotes economic development within the City and is essential for the continued economic growth and vitality of the City; and

WHEREAS, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, as well as the expansion of existing business enterprises within the City, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and

WHEREAS, the promotion of the housing stock is a major contributing factor to the growth of the City, which in turns stimulates trade and commerce and reduces unemployment; and

WHEREAS, residential development and redevelopment will attract and encourage business relocation and expansion since business will look to the available housing stock to meet the needs of management and the work force; and

WHEREAS, the City Council has previously adopted a residential demolition/rebuild incentive program ("the Program") to offer economic incentives for property owners to demolish existing older homes of lesser value and quality and rebuild a home of better quality and higher value; and

WHEREAS, finding that the Program has been successful to date, the City Council of the City of Farmers Branch finds it to be in the public interest to amend the Program further in order to build on the Program's prior success and to improve the City's existing housing stock;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City's Residential Demolition/Rebuild Program Incentive Program shall be amended as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

SECTION 2. The Residential Demolition/Rebuild Program Incentive Program as amended by this Resolution shall govern Applications for Demolition/Rebuild Program Incentives approved on or after November 15, 2016.

SECTION 3. This resolution shall be effective immediately upon final passage.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____

Amy Piukana, City Secretary

APPROVED:

_____

Bob Phelps, Mayor

APPROVED AS TO FORM:

_____

Peter G. Smith, City Attorney
(PGS:12-1-16:TM 81756)

RESOLUTION NO. 2016 -____
Exhibit "A"

Farmers Branch Residential Incentive Grant Program

Residential Demolition/Rebuild Incentive Program

Purpose. Chapter 380 of the Texas Local Government Code authorizes the City to provide incentives consisting of loans and grants of city funds, use of city personnel, facilities and services with or without charge, for the promotion of economic development. The availability of quality housing stock in the City of Farmers Branch encourages the relocation of businesses, attracts new businesses, and promotes expansion of existing businesses to and within the City, all of which in turn will stimulate growth, create jobs, and increase property and sales tax revenues. Subject to available funding and the conditions of this program, the City desires to provide economic development incentive grants pursuant to Chapter 380 of the Texas Local Government Code to encourage the redevelopment of existing one-family detached residential properties with the construction of new, higher value, one-family detached residential structures.

Eligible Applicants and Projects. This program is available to people who own and occupy a one family detached dwelling (a "residence") in the City who agree to demolish the existing residence and to construct a new residence at the same location. The eligible residence owner shall be required to enter into an agreement for the program prepared by and approved by the City Attorney. Additionally, a developer or builder may qualify for the program if the developer or builder owns a single-family residence in the City and agrees to demolish the residence and construct a new single family residence at the same location; provided, however, any incentive to be paid pursuant the program agreement will be paid to the first person that owns and occupies the new residence and not the developer or builder. The eligible developer or builder shall be required to enter into an agreement with the City for the program prepared by and approved by the City Attorney. In the case of a developer or builder, the program agreement will be assignable to the first owner occupant of the new residence within 24 months after completion of construction of the new residence, who will then be entitled to payment of the incentives. The incentive will no longer be available if the owner or developer fails to sell and transfer the new residence to an owner/occupant within the twenty-four (24) month period. The program agreement will contain requirements for the new residence to contain a certain minimum square feet and for the new residence (excluding the land) to have a minimum assessed value.

The demolition of the existing residence and the construction of a new residence must be completed, and a certificate of occupancy or completion issued by the City for the new residence, not later than twenty-four (24) months after the effective date of the incentive agreement entered with the City following approval by the City of an eligible project for participation in the program. The program participants will be required to consent to periodic City inspections of the demolition of the existing residence and the construction of the new residence. Property owners who are delinquent in payment of property taxes or other fees due to the City are ineligible to participate in the program, and the program agreement will terminate if the property owner is delinquent in payment of property taxes or other fees due to the City.

The property owner must be approved as an eligible participant in the program and shall have entered into the program agreement with the City prior to commencement of any demolition work

relating to the existing residence and prior to the construction of the new residence. A project is not eligible if work commences prior to approval of the project by the City Council.

There are two (2) categories of residential structures that qualify for the program: (1) residential structures with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less, and (2) residential structures with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). The City will provide (i) a demolition incentive grant in the amount of Fifteen Thousand Dollars ($15,000.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less. The City will provide (ii) a demolition incentive grant in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). Each annual incentive shall be equal to one hundred percent (100%) of the difference between the City property taxes assessed and paid for the new improvements (the new residential structure excluding the land) for a given tax year and the City property taxes assessed and paid for the residential structure (prior to demolition) (excluding the land) for the tax year in which the structure was demolished (the "Base Year"). The five (5) annual incentives will be paid on April 1 of the calendar year beginning with April 1 of the calendar immediately following the calendar year in which a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. The applicable demolition incentive will be paid as follows: (i) fifty percent (50%) of the demolition incentive within thirty (30) days after completion of the demolition and submission of a request from the property owner/contractor for payment and (ii) the remaining fifty percent (50%) of the demolition incentive within thirty (30) days after a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. Failure to timely commence and complete construction of the new residential structure will require the applicant to repay the demolition incentive to the City.

In the event the participant is a builder or developer, the annual incentive will be paid to the first owner occupant of the new residence who acquires the new residence after the completion of construction of the new residence and not to the developer or builder provided the new residence is sold to the first owner occupant within twenty-four (24) months after completion of construction of the new residence. The annual incentive would be paid on April 1 of the calendar year beginning with April 1 of the calendar year immediately following the calendar year in which the owner occupies the new residence pursuant to a certificate of occupancy or completion issued by the City for such owner occupant.

The City may consider incentives under this program for the applicant intends to purchase adjacent residential properties, demolish both residential structures, re-plat the two lots into a single lot and construct a new residential structure on the single lot. In such event the combined assessed value of the residential structures to be demolished shall apply for the determination of the base year assessed value for the annual incentive provided the new residential structure to be constructed on the single lot will have an assessed value following construction of at least two times the combined assessed value of the residential structures to be demolished. In addition only one demolition incentive will be provided.

For illustration purposes only, assume that the assessed value for an existing residential improvement is $200,000 for tax year 2017, and the project is approved by the City in 2017, and demolition commences in 2017. In this example, the Base Year is 2017 and the Base Year Assessed Value is $200,000. Further assume that the project is completed, the City issues a certificate of completion or occupancy on May, 15, 2018, and that the certified assessed value for the new improvements for tax year 2019 (which will be the assessed value as of January 1, 2019 which will be the first year that the full value of the new improvements will be included in the certified appraised value from the Dallas Central Appraisal District) is $300,000. The first incentive will be equal to 100% of the difference in City taxes paid for the new improvements for tax year 2019 less the City taxes paid for the improvements for the Base Year 2017, and would be paid to the applicant April 1, 2020.

In determining the amount of the annual incentive to be paid pursuant to this Program, in no case shall the City pay to the property owner an annual incentive in an amount greater than the amount of City ad valorem taxes collected by the City with respect to the property on which the new residence is constructed for the immediately prior tax year.

Exclusions from Base Year Assessed Value. In establishing the Base Year Assessed Value for the property for the Program, valuation freezes, exemptions or reductions to which a current or former owner or occupant of the property is entitled because of age, disability, or veteran status shall not be taken into consideration. Furthermore, in determining the Base Year amount of City property taxes paid, the base year amount paid will be determined as if no exemptions allowed pursuant to Chapter 11 of the Texas Tax Code are applied unless the same exemption(s) will be also be in effect to reduce the amount of city property tax due for the tax years in which the incentive will be paid.

Incentive Agreement. The incentive will be provided pursuant an agreement between the City and the property owner (or developer/builder, as the case may be) to be prepared and approved by the City Attorney. The incentive agreement is not transferable and may not be assigned if the property is sold or transferred (including a life estate) to a subsequent owner, except in the case of a builder or developer as set forth above. In the event the new residence is sold or transferred, the incentive agreement shall automatically terminate and no further incentives will be paid.

Application. A person desiring to participate in the program shall submit an application to the Director of Economic Development on a form provided by the City prior to commencement of any demolition of the existing residence on the property. The application shall require the property owner to provide the details of the proposed demolition/rebuild project, the estimated project costs and such other information as the City may require.

Review Process. The application shall be reviewed by the Director of Economic Development (or designee) who shall determine whether the applicant and the proposed project qualify for the program. The Director of Economic Development shall review a completed application not later than fifteen (15) business days after submission. If an application is incomplete or if additional information is required, the Director of Economic Development shall notify the property owner in writing of such request with a deadline to submit such requested information. The property owner shall provide a complete application or the requested additional information, as the case may be, within the stated time period or the application shall be deemed withdrawn. The Director of

Economic Development will notify the property owner in writing if the application is denied or approved, and if approved, the Director will provide the required incentive agreement. The decision of the Director of Economic Development shall be final. The property owner will be required to execute and return the incentive contract within fifteen (15) business days after receipt from the City.

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-111

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.5

Consider approving Resolution No. 2016-111 authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of the property located at 14326 Castleton Drive; and take appropriate action.

BACKGROUND:

In an effort to improve the quality of housing opportunities in Farmers Branch, the City Council enacted a Residential Demolition/Rebuild Program pursuant to Chapter 380 of the Texas Local Government Code to encourage the redevelopment of existing single-family detached residential properties with the construction of new, higher value, single-family detached residential structures.

DISCUSSION:

Applicants Cameron and Jennifer Spooner are applying for Demo Rebuild. There are two (2) categories of residential structures that qualify for the program, residential structures with a taxable value of One Hundred Thousand Dollars ($100,000.00) or less, and residential structures with a taxable value of more than One Hundred Thousand Dollars ($100,000.00. The City will provide a cash incentive grant in the amount of Fifteen Thousand Dollars ($15,000.00) and five (5) annual consecutive economic development incentive grants for residential structures to be demolished with a taxable value of One Hundred Thousand Dollars ($100,000.00) or less. The City will provide a cash incentive grant in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00) and five (5) annual consecutive economic development incentive grants for residential structures to be demolished with a taxable value of more than One Hundred Thousand Dollars ($100,000.00). Each incentive shall be equal to one hundred percent (100%) of the difference between the City property taxes assessed and paid for the new improvement (excluding the land) for a given tax year and the City property taxes assessed and paid for the residential structure (prior to demolition) (excluding the land) for the tax year in which the structure was demolished (the "Base Year"). The five (5) annual incentives will be paid on April 1 of the calendar year beginning with April 1 of the calendar immediately following the calendar year in which a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. The cash incentive will be paid within thirty (30) days after a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure.

ATTACHMENTS:

1. Demo Rebuild Application 14326 Castleton Drive
2. Location Map 14326 Castleton Drive
3. Current Elevation 14326 Castleton Drive
4. Front Elevation of New Home 14326 Castleton Drive
5. Demo Rebuild PPT for 14326 Castleton Drive

6. Resolution for 14236 Castleton Drive

RECOMMENDATION:
Recommended motion by City Administration to approve Resolution No. 2016-111 authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of property located at 13426 Castleton Drive

POSSIBLE COUNCIL ACTION:
1. I move to approve Resolution 2016-111
2. I move to approve Resolution 2016-111 with modifications.
3. I move to table the issue for further study or take no action.

FARMERS BRANCH

Application Number D/R- _____

Date Received _____

CITY OF FARMERS BRANCH

RESIDENTIAL DEMOLITION/REBUILD INCENTIVE PROGRAM

APPLICATION AND POLICY

This application is for the Residential Demolition/Rebuild Incentive Program and is subject to the attached policy. By submitting this application the undersigned acknowledges that such person has read and agrees to comply with the policy. [1]

Section A: Applicant Information

Applicant's Full Name Cameron Spooner

Spouse or Co-Owner Jennifer Kavanaugh

Current Mailing Address 2614 Andrea Lane

City Dallas State TX Zip Code 75228

Phone Cell Fax

E-mail [2]

For additional information regarding this application or the Residential Incentives Program, please contact Allison Cook, Economic Development Manager at 972.919.2507.

[2] A person's home email address is confidential and may not be disclosed to the public by the city unless a citizen consents. By submission of this application you consent to the public disclosure of your email address unless requested otherwise in writing.

(kbl:8/25/14:67780)

Section B: New Home Information

13426 Castleton DR.

Address of New Home (the structure to be demolished and to be replaced with new residence)[3]

Farmers Branch TX 75234

City State Zip Code

$ 500 000.00

Estimated Value of new structure (value of improvement only, not inclusive of land)

Applicant shall include with the submittal of this application a copy of each of the following:

- Valid Texas driver's license or Texas I.D. card for identification verification
- Completed W-9 Form, including Social Security Number or taxpayer ID number, for tax purposes
- Elevations and floor plan of new home

Submit floor plan of new home via email to Allison Cook and/or Stephanie Hall:
Allison.cook@farmersbranchtx.gov
Stephanie.hall@farmersbranchtx.gov

Section C: Incentive Selection

I am applying for the following incentive:

Residential Demolition/Rebuild Incentive Program:
There are two (2) categories of residential structures that qualify for the program: (1) residential structures with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less, and (2) residential structures with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). The City will provide (i) a demolition incentive grant in the amount of Fifteen Thousand Dollars ($15,000.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less. The City will provide (ii) a demolition incentive grant in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). Each annual incentive shall be equal to one hundred percent (100%) of the difference between the City property taxes assessed and paid for the new improvements (the new residential structure excluding the land) for a given tax year and the City property taxes assessed and paid for the residential structure (prior to demolition) (excluding the land) for the tax year in which the structure was demolished (the "Base Year"). The five (5) annual incentives will be paid on April 1 of the calendar year beginning with April 1 of the calendar immediately following the calendar year in which a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. The applicable demolition incentive will be paid as follows: (i) fifty percent (50%) of the demolition incentive within thirty (30) days after completion of the demolition and submission of a request from the property owner/contractor for payment and (ii) the remaining

[3] If address for the residence for the demolition/rebuild program is different from the applicant's address in Section A , above.

fifty percent (50%) of the demolition incentive within thirty (30) days after a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. Failure to timely commence and complete construction of the new residential structure will require the applicant to repay the demolition incentive to the City.

In the event the participant is a builder or developer, the annual incentive will be paid to the first owner occupant of the new residence who acquires the new residence after the completion of construction of the new residence and not to the developer or builder provided the new residence is sold to the first owner occupant within twenty-four (24) months after completion of construction of the new residence. The annual incentive would be paid on April 1 of the calendar year beginning with April 1 of the calendar year immediately following the calendar year in which the owner occupies the new residence pursuant to a certificate of occupancy or completion issued by the City for such owner occupant.

The City may consider incentives under this program for the applicant intends to purchase adjacent residential properties, demolish both residential structures, re-plat the two lots into a single lot and construct a new residential structure on the single lot. In such event the combined assessed value of the residential structures to be demolished shall apply for the determination of the base year assessed value for the annual incentive provided the new residential structure to be constructed on the single lot will have an assessed value following construction of at least two times the combined assessed value of the residential structures to be demolished. In addition only one demolition incentive will be provided.

Section D: Acknowledgements

I hereby certify that I am the owner and occupant of the property described in Section B, above (or that I am a builder or developer and own the property described in Section B above) and that the information set forth herein and accompanying this application is true and correct to the best of my knowledge. I hereby acknowledge that I have read, understand and agree to comply with the City of Farmers Branch Residential Demolition/Rebuild Incentive Program policy. Any VIOLATION of the terms pr conditions of the Residential Demolition/Rebuild Incentive Program Policy or any false or misleading information in or submitted with this application shall constitute grounds for rejection of the application or termination of the reimbursement of the incentives, if approved, at the discretion of the City of Farmers Branch.

The undersigned acknowledges and agrees that the approval of the application shall not be deemed to be approval of any aspect of the construction of the proposed project, and that I am fully responsible for obtaining all required permits and inspections from the City of Farmers Branch, and that the demolition of the existing structure and the construction of the new residence complies with all applicable City rules, regulations and requirements.

I understand that my application will not be processed if it is incomplete. I further agree to provide any additional information for determining eligibility as requested by the City of Farmers Branch within the stated period of time for the submittal of the requested additional information, or the application will be deemed denied.

I understand that the approval of the application and participation in the program is discretionary with the City Council, and that the program may be suspended, terminated, or modified at any time regardless of availability of City funds or pending applications on file.

The undersigned acknowledges that if the application is approved that I (and my spouse or other joint owner of the property, if applicable) shall be required to enter into a contract with the City, for the payment of the incentive under the Residential Demolition/Rebuild Incentive Program and setting forth the Applicant(s) obligations under the Program.

Jennifer Kavanaugh

Printed Name of Applicant

Jennifer Kavanaugh 12-7-16

Signature Date

Camerin Spooner

Printed Name of Co-Applicant

12-7-16

Signature Date

(kbl:8/25/14:67780)

Farmers Branch Residential Incentive Grant Program

Residential Demolition/Rebuild Incentive Program

Purpose. Chapter 380 of the Texas Local Government Code authorizes the City to provide incentives consisting of loans and grants of city funds, use of city personnel, facilities and services with or without charge, for the promotion of economic development. The availability of quality housing stock in the City of Farmers Branch encourages the relocation of businesses, attracts new businesses, and promotes expansion of existing businesses to and within the City, all of which in turn will stimulate growth, create jobs, and increase property and sales tax revenues. Subject to available funding and the conditions of this program, the City desires to provide economic development incentive grants pursuant to Chapter 380 of the Texas Local Government Code to encourage the redevelopment of existing one-family detached residential properties with the construction of new, higher value, one-family detached residential structures.

Eligible Applicants and Projects. This program is available to people who own and occupy a one family detached dwelling (a "residence") in the City who agree to demolish the existing residence and to construct a new residence at the same location. The eligible residence owner shall be required to enter into an agreement for the program prepared by and approved by the City Attorney. Additionally, a developer or builder may qualify for the program if the developer or builder owns a single-family residence in the City and agrees to demolish the residence and construct a new single family residence at the same location; provided, however, any incentive to be paid pursuant the program agreement will be paid to the first person that owns and occupies the new residence and not the developer or builder. The eligible developer or builder shall be required to enter into an agreement with the City for the program prepared by and approved by the City Attorney. In the case of a developer or builder, the program agreement will be assignable to the first owner occupant of the new residence within 24 months after completion of construction of the new residence, who will then be entitled to payment of the incentives. The incentive will no longer be available, if the owner or developer fails to sell and transfer the new residence to an owner/occupant within the twenty-four (24) month period.

The demolition of the existing residence and the construction of a new residence must be completed, and a certificate of occupancy or completion issued by the City for the new residence, not later than twenty-four (24) months after the effective date of the incentive agreement entered with the City following approval by the City of an eligible project for participation in the program. The program participants will be required to consent to periodic City inspections of the demolition of the existing residence and the construction of the new residence. Property owners who are delinquent in payment of property taxes or other fees due to the City are ineligible to participate in the program, and the program agreement will terminate if the property owner is delinquent in payment of property taxes or other fees due to the City.

The property owner must be approved as an eligible participant in the program and shall have entered into the program agreement with the City prior to any demolition work relating to the existing residence and prior to the construction of the new residence. A project is not eligible if work commences prior to approval of the project by the City Council.

There are two options with respect to the incentives which may be granted pursuant to the Program. The eligible participant must select which option the participant desires to pursue at the time of application. At not time may a property qualify for more than one incentive pursuant to the Program.

Exclusions from Base Year Assessed Value. In establishing the Base Year Assessed Value for the property for both Program Option 1 and Program Option 2, valuation freezes, exemptions or reductions to which a current or former owner or occupant of the property is entitled because of age, disability, or veteran status shall not be taken into consideration. Furthermore, in determining the Base Year amount of City property taxes paid, the base year amount paid will be determined as if no exemptions allowed pursuant to Chapter 11 of the Texas Tax Code are applied unless the same exemption(s) will be also be in effect to reduce the amount of city property tax due for the tax years in which the incentive will be paid.

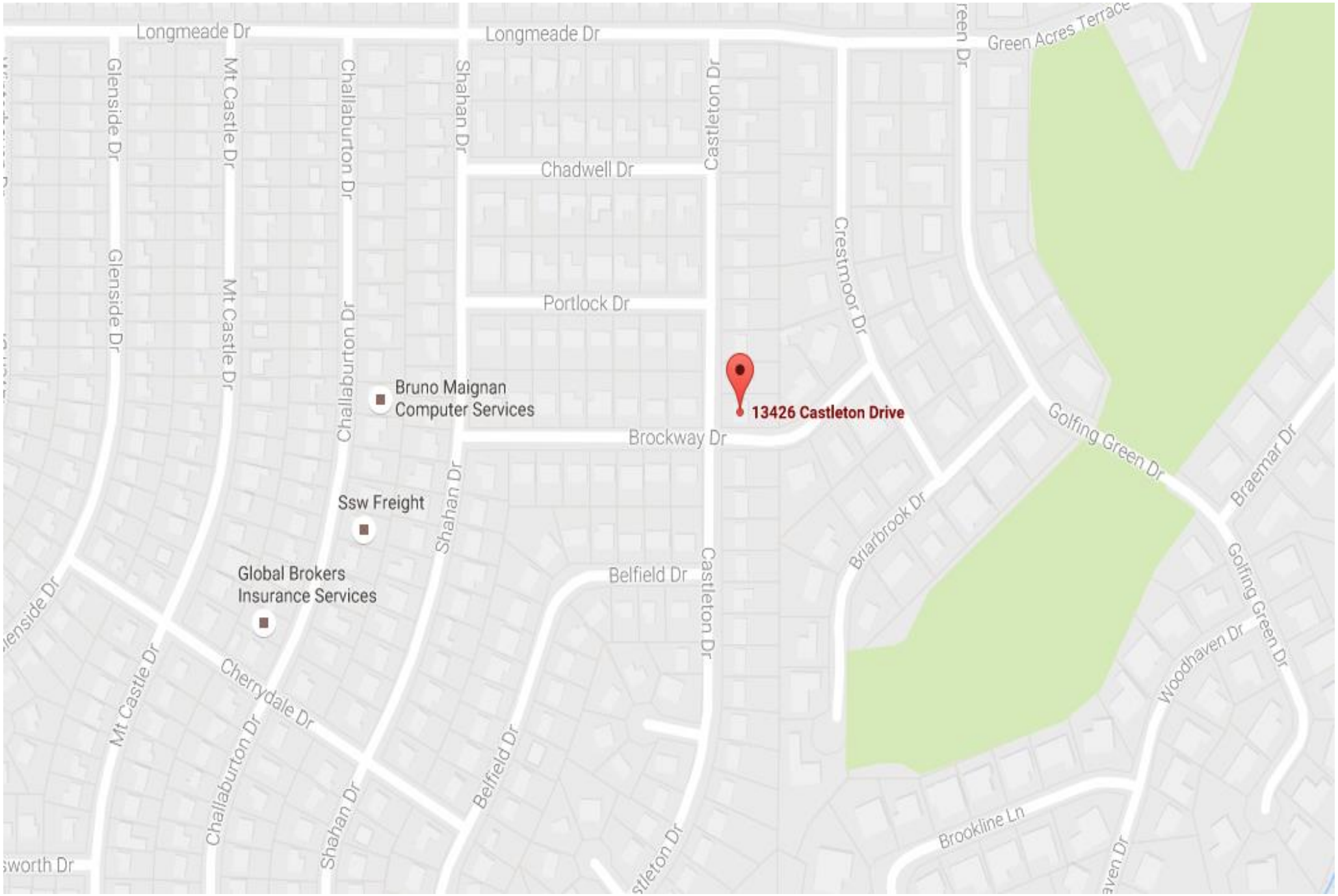
Incentive Agreement. The incentive will be provided pursuant an agreement between the City and the property owner (or developer/builder, as the case may be) to be prepared and approved by the City Attorney. The incentive agreement is not transferable and may not be assigned if the property is sold or transferred (including a life estate) to a subsequent owner, except in the case of a builder or developer as set forth above. In the event the new residence is sold or transferred, the incentive agreement shall automatically terminate and no further incentives will be paid.

Application. A person desiring to participate in the program shall submit an application to the Director of Economic Development on a form provided by the City prior to commencement of any demolition of the existing residence on the property. The application shall require the property owner to provide the details of the proposed demolition/rebuild project, the estimated project costs and such other information as the City may require.

Review Process. The application shall be reviewed by the Director of Economic Development (or designee) who shall determine whether the applicant and the proposed project qualify for the program. The Director of Economic Development shall review a completed application not later than fifteen (15) business days after submission. If an application is incomplete or if additional information is required, the Director of Economic Development shall notify the property owner in writing of such request with a deadline to submit such requested information. The property owner shall provide a complete application or the requested additional information, as the case may be, within the stated time period or the application shall be deemed withdrawn. The Director of Economic

Development will notify the property owner in writing if the application is denied or approved, and if approved, the Director will provide the required incentive agreement. The property owner will be required to execute and return the incentive contract within fifteen (15) business days after receipt from the City.

Incentive Payment. Except as noted below, the annual incentive for Program Option 1 will be paid to the property owner pursuant to the incentive agreement on April 1 of the calendar year beginning with April 1 of the calendar immediately following the first full calendar year following the date the City issues a certificate of completion following the completion of an approved project. In a year in which the property owner decides to pay property taxes on the property by utilizing the split-payment method, payment of the incentive will not be made until the earliest of (a) April 1, (b) 60 days following delivery to the City of paid tax receipts showing that all property taxes have been timely paid, or (c) September 1. The amount of the incentive shall be determined by the Director of Economic Development, whose decision shall be final in all respects.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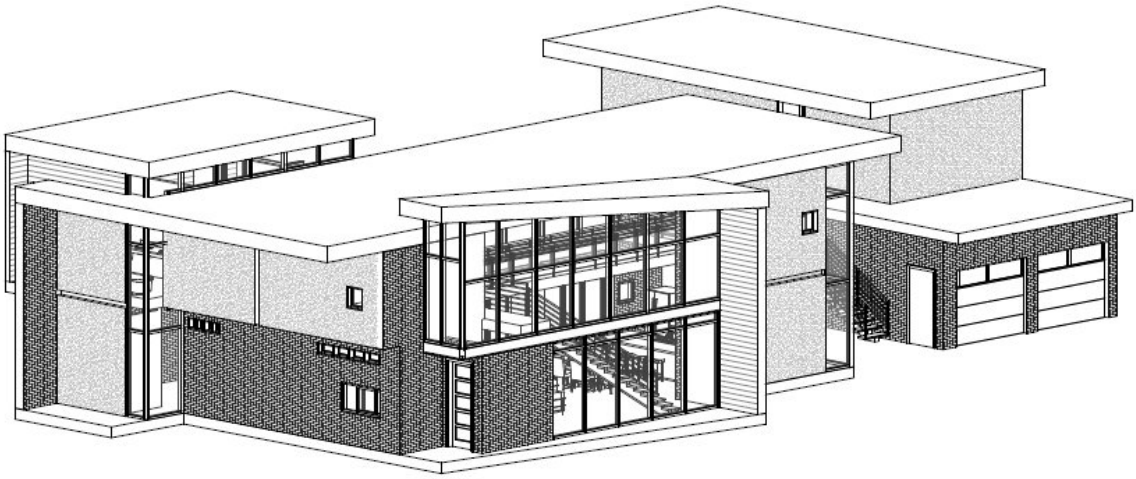
Shahan Dr
Castleton Dr
Chadwell Dr
Crestmoor Dr
Portlock Dr
Bruno Maignan
Computer Services
13426 Castleton Drive
Brockway Dr
Golfing Green Dr
Braemar Dr
Ssw Freight
Briarbrook Dr
Global Brokers
Insurance Services
Belfield Dr
Cherrydale Dr
Woodhaven Dr
Brookline Ln



South Elevation (Brockway)		
Material Used	Level 1	Level 2
Wood	4%	7%
Brick	65%	21%
Stucco	31%	72%
Total Masonry Percentage	96%	93%

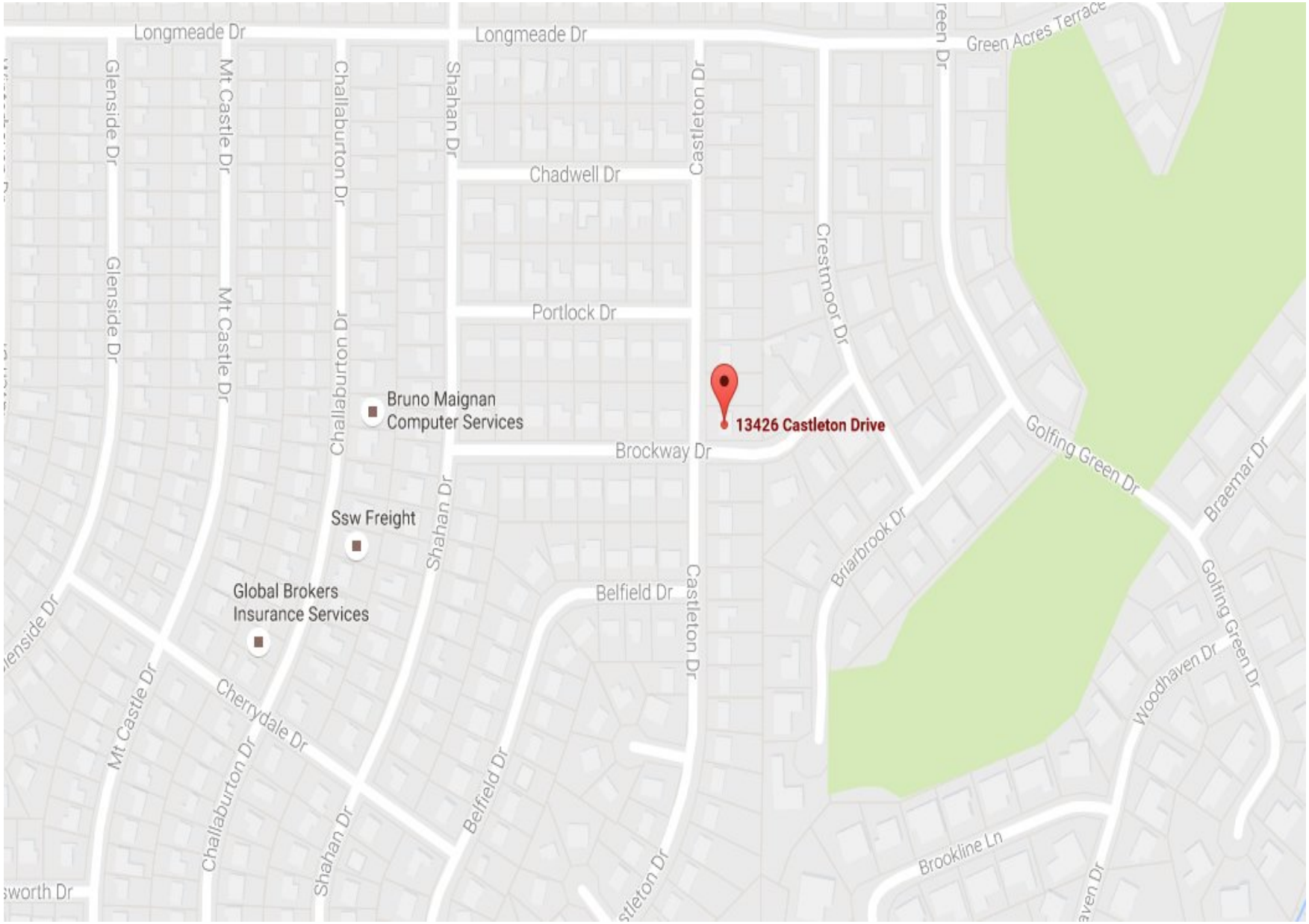
West Elevation (Castleton)		
Material Used	Level 1	Level 2
Wood	10%	21%
Brick	61%	0%
Stucco	18%	90%
Total Masonry Percentage	79%	90%

Demo Rebuild

13426 CASTLETON DRIVE

CAMERON AND JENNIFER SPOONER

FARMERS BRANCH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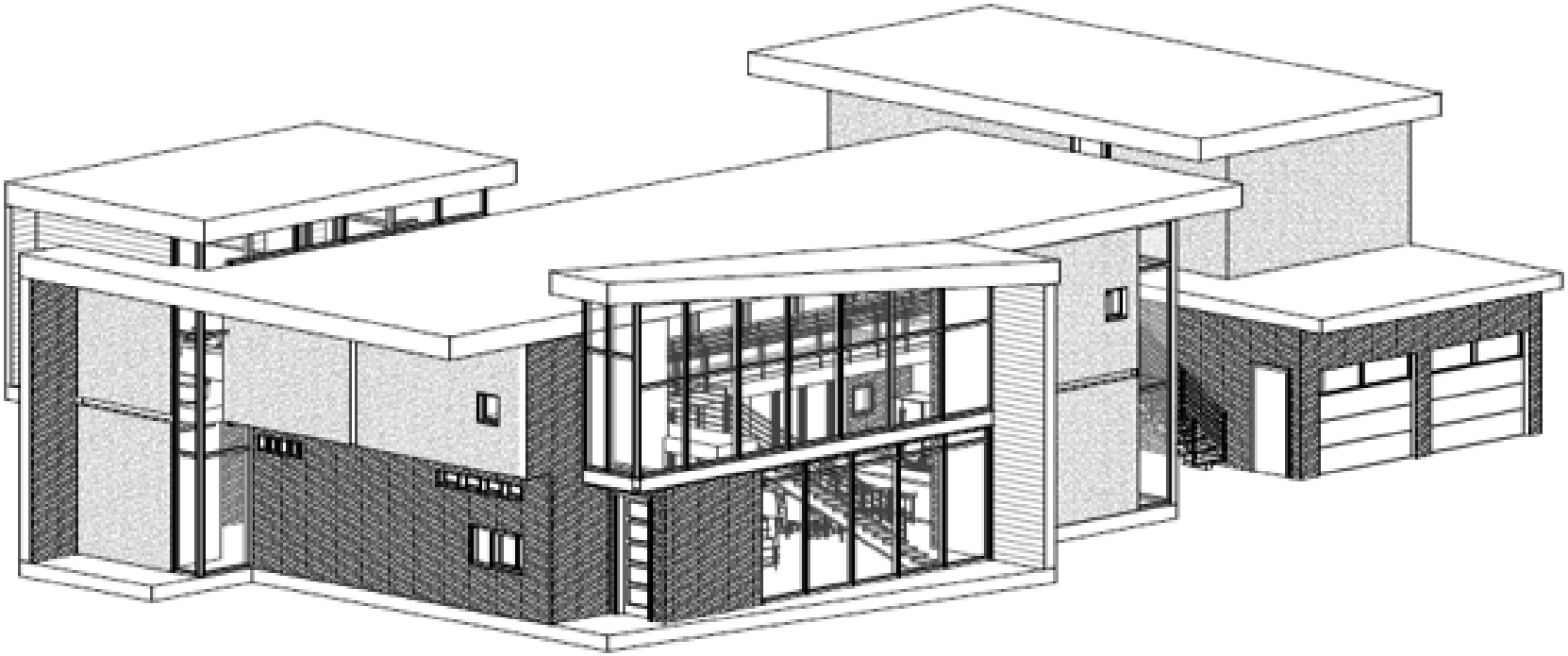
Chadwell Dr
Crestmoor Dr
Portlock Dr
Bruno Maignan
Computer Services
13426 Castleton Drive
Brockway Dr
Golfing Green Dr
Braemar Dr
Ssw Freight
Briarbrook Dr
Global Brokers
Insurance Services
Belfield Dr
Woodhaven Dr
Cherrydale Dr
Brookline Ln

FRONT ELEVATION



CURRENT IMPROVEMENT VALUE:

$63,820
1240 SF

ESTIMATED NEW IMPROVEMENT VALUE:

$500,000
2,800 SF

LAND VALUE:

$70,000

FARMERS BRANCH

RESOLUTION NO. 2016-111

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING EXECUTION OF A RESIDENTIAL DEMOLITION/REBUILD PROGRAM INCENTIVE AGREEMENT FOR THE OWNER OF PROPERTY AT 13426 CASTLETON DRIVE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch has established a Residential Demolition/Rebuild Incentive Program pursuant to Chapter 380 of the Texas Local Government Code for the purpose of promoting the redevelopment of existing single family housing stock within the City ("the Incentive Program"); and

WHEREAS, the owner of the property generally located at 13426 Castleton Drive has made application for the Incentive Program; and

WHEREAS, City Administration, having reviewed the foregoing application, has determined that the demolition and reconstruction of the residential structure on the above described property qualifies for the Incentive Program; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the execution of an agreement setting forth the terms and conditions by which the owner of the above-described property will receive the benefits of the Incentive Program.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to execute on behalf of the City of Farmers Branch a Residential Demolition/Rebuild Program Incentive Agreement with Cameron Spooner and Katherine Ann Kavanaugh with respect to property generally known as 13426 Castleton Drive, Farmers Branch, Texas, substantially in the form set forth in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 2. The City Manager has full authority to administer the above approved agreement on behalf of the City including, but not limited to, providing notices of default and termination as the City Manager may, from time to time, deem appropriate and necessary.

SECTION 3. This Resolution shall be effective immediately upon final passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____

Amy Piukana, City Secretary

APPROVED:

_____

Bob Phelps, Mayor

APPROVED AS TO FORM:

_____

Peter G. Smith, City Attorney
(kbl:12-6-16:81604)

STATE OF TEXAS	§	
	§	**RESIDENTIAL DEMOLITION/REBUILD PROGRAM INCENTIVE AGREEMENT**
	§	
COUNTY OF DALLAS	§	

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Farmers Branch, Texas (the "City"), and Cameron Spooner and Jennifer Ann Kavanaugh (the "Property Owner"), acting by and through their respective authorized officers and representatives. City and Property Owner are collectively referred to herein as "Parties" and separately as "Party."

WITNESSETH:

WHEREAS, Texas Local Government Code Chapter 380 allows City to provide incentives for the promotion of economic development; and

WHEREAS, the promotion of the redevelopment of existing housing stock within City's incorporated limits promotes economic development and is essential for City's continued economic growth and vitality; and

WHEREAS, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, as well as the expansion of existing business enterprises within City's incorporated limits, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and

WHEREAS, the promotion of the redevelopment of the housing stock within City's incorporated limits is a major contributing factor to City's growth, which in turn stimulates trade and commerce and reduces unemployment; and

WHEREAS, residential development and redevelopment will attract and encourage business relocation and expansion since business will look to the available housing stock to meet the needs of management and the work force; and

WHEREAS, City has determined that providing an economic development incentive in accordance with this Agreement will further City's objectives, will benefit City and City's inhabitants and will promote local economic development and stimulate business and commercial activity within City's incorporated limits; and

WHEREAS, Property Owner is the owner of a one-family detached residential dwelling located at 13426 Castleton Drive, Farmers Branch, Texas (hereinafter defined as the "Residence"); and

WHEREAS, Property Owner intends to demolish the Residence and construct a new one-family detached residential dwelling thereafter (hereinafter defined as the "New Residence"); and

WHEREAS, Property Owner has been approved as an eligible participant and the demolition of the Residence and the construction of the New Residence has been approved as an eligible project (hereinafter defined as an "Approved Project") under City's Demolition/Rebuild Property Tax Incentive Program (hereinafter defined as a "Program");

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article II
Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Annual Incentive(s)" means five (5) annual economic development incentives each in an amount equal to one hundred percent (100%) of the difference between the ad valorem taxes assessed by City against the New Residence for the applicable tax year and paid to City, and the amount of ad valorem taxes assessed by City against the Residence for the Base Year and paid to City, as calculated and determined by City, to be paid to Property Owner as set forth herein.

"Approved Project" means the approval of the demolition of the Residence and the construction of the New Residence as an approved project by City as being eligible for the incentives under the Program.

"Base Year" means January 1st of the calendar year immediately preceding the date of approval of the Project.

"City" means the City of Farmers Branch, Texas.

"Commencement Date" means the date fee simple title to the New Residence and the Land are conveyed by Contractor to the Property.

"Commencement of Construction" means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the Approved Project; and (ii) all necessary permits for the construction of the Approved Project have been issued by all applicable governmental authorities.

"Completion of Construction" means that (i) substantial completion of construction of the New Residence has occurred; and (ii) City has issued a final certificate of occupancy of certificate of inspection for the Approved Project.

"Effective Date" means the date this Agreement bears the signatures of the authorized representatives of all of the Parties.

"Event of Bankruptcy or Insolvency" means insolvency, appointment of receiver for Property Owner and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Property Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Expiration Date" means April 1st of the first full calendar year following the sixth (6th) anniversary of the Commencement Date.

"Impositions" means all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Property Owner or any property or any business owned by Property Owner within City's incorporated limits.

"Land" means the real property located in the City of Farmers Branch, Texas, on which the Residence is located, but excluding any improvements, which property is described as:

> Lot One (1), Block Twenty (20) of Johnston Park, Third Installment, an Addition to the City of Farmers Branch, Dallas County, Texas, according to the revised plat thereof recorded in Volume 37, Page 89, Map Records of Dallas County, Texas.

"New Residence" means a new one family detached dwelling to be constructed on the Land, as approved by City as an Approved Project, excluding the Land, which has a floor area of not less than 2800 square feet of air conditioned space and a Taxable Value (not including the Land) of not less than $500,000.00 as of January 1st of the calendar year following the date of Completion of Construction.

"Payment Request" means (a) with respect to the Annual Incentives paid pursuant to Section 3.1, below, a written request from Property Owner submitted to City on or before April 1st of each calendar year for the payment of the Annual Incentive accompanied by a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for the preceding tax year have been paid in full, and such other information as City may reasonably request; (b) with respect to the first installment of the Demolition Grant, a written request from Property Owner submitted to City requesting payment of the first installment of the Demolition Grant accompanied by sufficient evidence that the Residence has been demolished and removed from the Land and that the Land is ready for construction of the New Residence; and (c) with respect to the second installment of the Demolition Grant, a written request from Property Owner

submitted to City requesting payment of the second installment of the Demolition Grant accompanied by a copy of the certificate of occupancy or certificate of final inspection of the New Residence issued by City's Building Inspections Department.

"Project" means the demolition of the Residence and the construction of the New Residence on the Land.

"Property Owner" means the first person or people to whom Contractor conveys fee simple title of the New Residence after Completion of Construction of the New Residence and who use(s) the New Residence as a residence homestead.

"Residence" means the one family detached dwelling located on the Land as of the Effective Date.

"Residential Demolition/Rebuild Program" means the City of Farmers Branch Residential Demolition/Rebuild Incentive Program adopted by Resolution of the City Council, as amended.

"Taxable Value" shall mean the appraised value of the Residence or the New Residence, as the case may be, as certified by the Dallas Central Appraisal District, or its successor entity, as of January 1 of a given year. The Parties agree that, as of the Effective Date, the Taxable Value of the Residence is $63,820.00

Article III
Economic Development Incentive

3.1 Payment. Subject to Property Owner's continued satisfaction of the terms and conditions of this Agreement and the obligation of Property Owner to repay the Annual Incentives pursuant to Section 5.2 hereof, City agrees to provide the Annual Incentives to Property Owner to be paid not later than the thirtieth (30th) day after City receipt of the applicable Payment Request following April 1st of each calendar year, beginning April 1st of the calendar year immediately following the Commencement Date, provided City has timely received the ad valorem taxes assessed against the Land and the New Residence in full for the respective tax year. Property Owner shall submit a Payment Request to City on or before April 1st of each calendar year for the applicable Annual Incentive. For example, assume for illustration purposes only that a Project was approved by City in 2016 making 2016 the Base Year. Further assume that (i) City taxes assessed and paid for the Residence (improvements excluding the Land) for 2016 was $1,000 and (ii) the Approved Project was completed June 1, 2017, then the Commencement Date would be June 1, 2017. Further assume that City taxes assessed and paid for tax years 2018 is $2,000. Then the first Annual Incentive would be for the difference in City taxes assessed on the New Residence for tax year 2018 in the amount of $2,000 and the amount of City taxes assessed for the Base Year (2016) of $1,000 resulting in an Annual Incentive of $1,000, which would be paid not later than the thirtieth (30) day after City receipt of the applicable Payment Request following April 1, 2019, provided Property Owner submitted a Payment Request on or before April 1, 2019, which included a tax receipt showing

that the ad valorem taxes assessed against the Land and the New Residence for tax year 2018 have been paid in full.

3.2 Current Revenue. The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

3.3 Payment of Demolition Grant. City agrees to pay the Demolition Grant to Property Owner in the amount of Fifteen Thousand and No/100 Dollars ($15,000.00) in two equal installments of $7500.00 each as follows:

(a) With respect to the first installment, not later than thirty (30) days after City's receipt of a Payment Request from Property Owner, but in no case earlier than thirty (30) days prior to completion of demolition of the Residence and removal of all debris from the Land; and

(b) With respect to the second installment, not later than thirty (30) days after City's receipt of a Payment Request from Property Owner, but in no case earlier than the thirtieth (30th) day after Completion of Construction of the New Residence.

City's obligation to pay the Demolition Grant, or any installment thereof, shall terminate if Completion of Construction of the New Residence does not occur on or before the second (2nd) anniversary of the Effective Date.

Article IV
Incentive Conditions

City's obligation to pay the Annual Grants shall be conditioned upon Property Owner's continued compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

4.1 Inspections. Property Owner agrees to submit to periodic inspections of the Approved Project by City during the period beginning with the date of Commencement of Construction and ending on date of Completion of Construction.

4.2 Construction of the Approved Project. Property Owner, shall subject to delays resulting from events of Force Majeure, cause Completion of Construction of the Approved Project to occur on or before twenty-four (24) calendar months after the Effective Date.

Article V
Termination

5.1 This Agreement shall terminate upon the occurrence of any one of the following:

(a) Mutual agreement of the Parties;

(b) The Expiration Date;

(c) If any Impositions owed to City or the State of Texas by Property Owner shall become delinquent (provided, however, Property Owner shall retain the right to timely and properly protest and contest any such Impositions) and City provides Property Owner notice of termination, in which case termination shall be immediate;

(d) In the event Property Owner breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof provided by City;

(e) If Property Owner suffers an Event of Bankruptcy or Insolvency;

(f) If, subject to delays resulting from an event of Force Majeure, Commencement of Construction of the New Residence has not occurred within twelve (12) months after demolition and removal of the Residence from the Land and City provides Property Owner notice of termination, in which case termination shall be immediate;

(g) If any subsequent Federal or State legislation or any final, non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, in which case termination shall be immediate upon the effective date of said law or the date the judgment becomes non-appealable;

(h) If upon Completion of Construction of the New Residence, the New Residence contains less than 2800 square feet of air conditioned space as set forth in the definition of "New Residence" herein and City provides Property Owner notice of termination, in which case termination shall be immediate;

(i) If on January 1 following the date of Completion of Construction of the New Residence, the New Residence has a Taxable Value of less than $500,000.00 as set forth in the definition of "New Residence" herein and City provides Property Owner notice of termination, in which case termination shall be immediate;

(j) The sale or transfer of title to the Land and/or the Residence without obtaining prior written consent from City for assignment of this Agreement to the new owner;

(k) The sale or transfer of title to the Land to a third party after the demolition of the Residence but before Commencement of Construction of the New Residence; or

(l) The termination of use of the New Residence by Property Owner as Property Owner's residential homestead.

5.2 In the event of termination by City pursuant to 5.1(c), (d), (e), (g), (j), or (k), Property Owner shall immediately repay to City an amount equal to the total amount of Incentives paid to Property Owner, if any, prior to termination of this Agreement. If this Agreement is terminated pursuant to (i) Section 5.1(d) for breach of Section 4.2, or (ii) Sections 5.1(f), (h), (i), or (k); Property Owner shall, upon written demand from City, reimburse City the amount of the Demolition Grant, or portion thereof, paid to Contractor as of the date of termination of this Agreement.

Article VI
Miscellaneous

6.1 Assignment. This Agreement may not be assigned without the prior written consent of City. This Agreement shall automatically terminate upon any subsequent sale or transfer of the ownership of the Residence or the New Residence.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties.

6.3 Limitation on Liability. It is understood and agreed between the Parties that Property Owner, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.4 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.5 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.6 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Property Owner, to:

On the Effective Date:

Cameron Spooner
Jennifer Ann Kavanaugh
2614 Andrea Lane
Dallas, Texas 75228

After Completion of Construction:

Cameron Spooner
Jennifer Ann Kavanaugh
13426 Castleton Drive
Farmers Branch, Texas 75234

If intended for City, to:

Attn: City Manager
City of Farmers Branch, Texas
13000 William Dodson Pkwy.
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

6.7 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.8 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.9 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.10 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.11 Recitals. The recitals to this Agreement are incorporated herein.

6.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.14 Employment of Undocumented Workers. During the term of this Agreement the Property Owner agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Property Owner shall repay the amount of the Annual Grants and any other funds received by the Property Owner from the City as of the date of such violation within one hundred twenty (120) days after the date the Property Owner is notified by the City of such violation, plus interest at the rate of four (4%) compounded annually from the date of violation until paid. The Property Owner is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Property Owner or by a person with whom the Company contracts.

6.15 Future Incentives. The Property Owner agrees that the residence at 13426 Castleton Drive, Farmers Branch, Texas, will not be eligible for any other or further residential or other incentive offer now or hereafter by the City.

[Signature Page to Follow]

SIGNED AND AGREED on this _____ day of _____, 2016.

City of Farmers Branch, Texas

By:_____
Charles S. Cox, City Manager

Attest:

By:_____
Amy Piukana, City Secretary

Approved As To Form:

By: Peter G Smith
Peter G. Smith, City Attorney

SIGNED AND AGREED on this _____ day of _____, 2016.

Property Owner

By:_____
Dennis Cameron Spooner

By:_____
Jennifer Ann Kavanaugh

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-122

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.6

Consider approving Resolution No. 2016-122 authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of the property located at 3535 Apple Valley; and take appropriate action.

BACKGROUND:
In an effort to improve the quality of housing opportunities in Farmers Branch, the City Council enacted a Residential Demolition/Rebuild Program pursuant to Chapter 380 of the Texas Local Government Code to encourage the redevelopment of existing single-family detached residential properties with the construction of new, higher value, single-family detached residential structures.

DISCUSSION:
Applicant Todd Bonneau Homes is applying for the new Demo Rebuild incentive. This includes an incentive that is based on the increase over the course of five (5) years in the City Property taxes paid on the difference between the original home appraised value (excluding the land value), as determined by the Dallas County Appraisal District. This option also includes a reimbursement of up to $12,500.00 of the cost of demolition of the original home following completion of demolition. Demolition of the original home and completion of construction and occupancy of the new home must be within 24 months of the effective date of the incentive agreement signed with the City. The current improvement value is $120,820 and the estimated new improvement value is estimated to be at least $450,000.

ATTACHMENTS:
1. Demo Rebuild Application 3535 Apple Valley
2. Location Map 3535 Apple Valley
3. Current Elevation 3535 Apple Valley
4. Front Elevation of New Home 3535 Apple Valley
5. 3535 Apple Valley PPT
6. Resolution 2016-122 for 3535 Apple Valley

RECOMMENDATION:
Recommended motion by City Administration to approve Resolution No. authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of property located at 3535 Apple Valley

POSSIBLE COUNCIL ACTION:
1. I move to approve Resolution 2016-122

2. I move to approve Resolution 2016-122 with modifications.
3. I move to table the issue for further study or take no action.

FARMERS BRANCH

Application Number D/R- _____

Date Received _____

CITY OF FARMERS BRANCH

RESIDENTIAL DEMOLITION/REBUILD INCENTIVE PROGRAM

APPLICATION AND POLICY

This application is for the Residential Demolition/Rebuild Incentive Program and is subject to the attached policy. By submitting this application the undersigned acknowledges that such person has read and agrees to comply with the policy. [1]

Section A: Applicant Information

Applicant's Full Name: Todd Bonneau Homes, LLC

Spouse or Co-Owner: _____

Current Mailing Address: 2815 Valley View #112

City: Farmers Branch Zip Code: Tx 75234

Phone: _____ Fax: _____

E-mail [2]: _____

For additional information regarding this application or the Residential Incentives Program, please contact Allison Cook, Economic Development Manager at 972.919.2507.

[2] A person's home email address is confidential and may not be disclosed to the public by the city unless a citizen consents. By submission of this application you consent to the public disclosure of your email address unless requested otherwise in writing.

Section B: New Home Information

3535 APPLE VALLEY

Address of New Home (the structure to be demolished and to be replaced with new residence)[3]

FARMERS BRANCH TX 75234

City State Zip Code

450,000

Estimated Value of new structure (value of improvement only, not inclusive of land)

Applicant shall include with the submittal of this application a copy of each of the following:

- Valid Texas driver's license or Texas I.D. card for identification verification
- Completed W-9 Form, including Social Security Number or taxpayer ID number, for tax purposes
- Elevations and floor plan of new home

Submit floor plan of new home via email to Allison Cook and/or Stephanie Hall:
Allison.cook@farmersbranchtx.gov
Stephanie.hall@farmersbranchtx.gov

Section C: Incentive Selection

I am applying for the following incentive:

Residential Demolition/Rebuild Incentive Program:
There are two (2) categories of residential structures that qualify for the program: (1) residential structures with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less, and (2) residential structures with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). The City will provide (i) a demolition incentive grant in the amount of Fifteen Thousand Dollars ($15,000.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less. The City will provide (ii) a demolition incentive grant in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). Each annual incentive shall be equal to one hundred percent (100%) of the difference between the City property taxes assessed and paid for the new improvements (the new residential structure excluding the land) for a given tax year and the City property taxes assessed and paid for the residential structure (prior to demolition) (excluding the land) for the tax year in which the structure was demolished (the "Base Year"). The five (5) annual incentives will be paid on April 1 of the calendar year beginning with April 1 of the calendar immediately following the calendar year in which a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. The applicable demolition incentive will be paid as follows: (i) fifty percent (50%) of the demolition incentive within thirty (30) days after completion of the demolition and submission of a request from the property owner/contractor for payment and (ii) the remaining

[3] If address for the residence for the demolition/rebuild program is different from the applicant's address in Section A , above.

(kbl:8/25/14:67780)

fifty percent (50%) of the demolition incentive within thirty (30) days after a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. Failure to timely commence and complete construction of the new residential structure will require the applicant to repay the demolition incentive to the City.

In the event the participant is a builder or developer, the annual incentive will be paid to the first owner occupant of the new residence who acquires the new residence after the completion of construction of the new residence and not to the developer or builder provided the new residence is sold to the first owner occupant within twenty-four (24) months after completion of construction of the new residence. The annual incentive would be paid on April 1 of the calendar year beginning with April 1 of the calendar year immediately following the calendar year in which the owner occupies the new residence pursuant to a certificate of occupancy or completion issued by the City for such owner occupant.

The City may consider incentives under this program for the applicant intends to purchase adjacent residential properties, demolish both residential structures, re-plat the two lots into a single lot and construct a new residential structure on the single lot. In such event the combined assessed value of the residential structures to be demolished shall apply for the determination of the base year assessed value for the annual incentive provided the new residential structure to be constructed on the single lot will have an assessed value following construction of at least two times the combined assessed value of the residential structures to be demolished. In addition only one demolition incentive will be provided.

Section D: Acknowledgements

I hereby certify that I am the owner and occupant of the property described in Section B, above (or that I am a builder or developer and own the property described in Section B above) and that the information set forth herein and accompanying this application is true and correct to the best of my knowledge. I hereby acknowledge that I have read, understand and agree to comply with the City of Farmers Branch Residential Demolition/Rebuild Incentive Program policy. Any VIOLATION of the terms pr conditions of the Residential Demolition/Rebuild Incentive Program Policy or any false or misleading information in or submitted with this application shall constitute grounds for rejection of the application or termination of the reimbursement of the incentives, if approved, at the discretion of the City of Farmers Branch.

The undersigned acknowledges and agrees that the approval of the application shall not be deemed to be approval of any aspect of the construction of the proposed project, and that I am fully responsible for obtaining all required permits and inspections from the City of Farmers Branch, and that the demolition of the existing structure and the construction of the new residence complies with all applicable City rules, regulations and requirements.

I understand that my application will not be processed if it is incomplete. I further agree to provide any additional information for determining eligibility as requested by the City of Farmers Branch within the stated period of time for the submittal of the requested additional information, or the application will be deemed denied.

I understand that the approval of the application and participation in the program is discretionary with the City Council, and that the program may be suspended, terminated, or modified at any time regardless of availability of City funds or pending applications on file.

The undersigned acknowledges that if the application is approved that I (and my spouse or other joint owner of the property, if applicable) shall be required to enter into a contract with the City, for the payment of the incentive under the Residential Demolition/Rebuild Incentive Program and setting forth the Applicant(s) obligations under the Program.

Todd Bonneau Homes, LLC

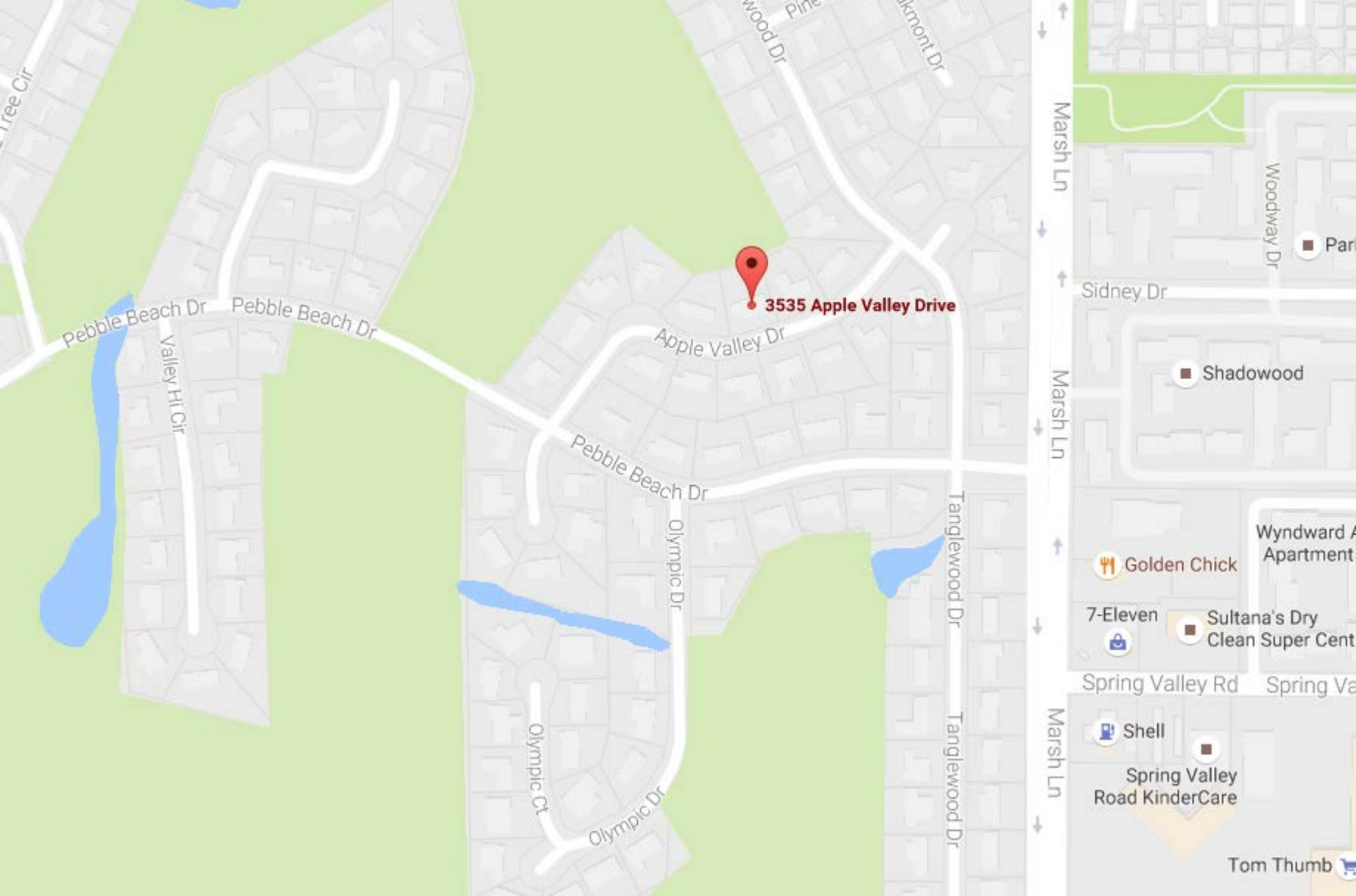
Printed Name of Applicant

Todd Bonneau 12.6.16

Signature Date

Printed Name of Co-Applicant

Signature Date


3535 Apple Valley Drive
Pebble Beach Dr
Pebble Beach Dr
Pebble Beach Dr
Apple Valley Dr
Valley Hi Cir
Olympic Dr
Olympic Ct
Olympic Dr
Tanglewood Dr
Tanglewood Dr
Marsh Ln
Marsh Ln
Marsh Ln
Woodway Dr
Sidney Dr
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7-Eleven
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Spring Valley Rd
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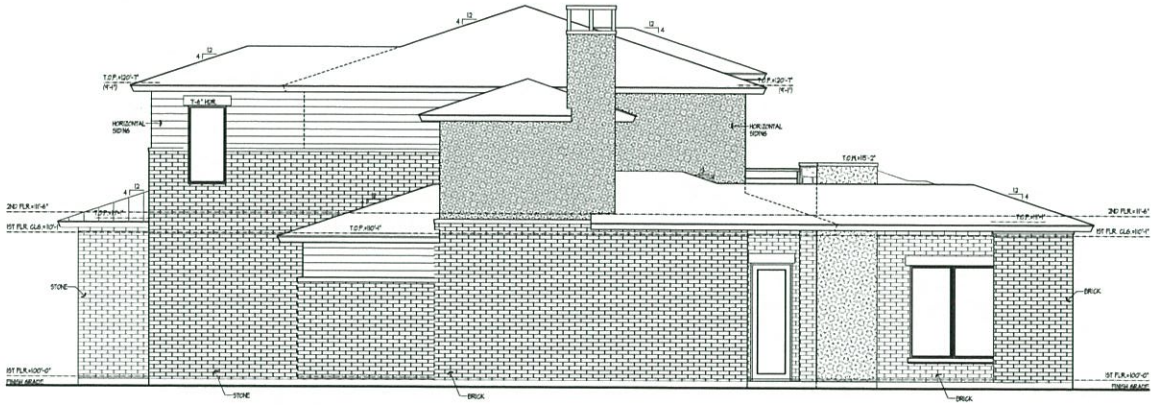
Shell
Spring Valley
Road KinderCare
Tom Thumb



2 SIDE ELEVATION 1/4" = 1'-0"

1 ENTRY ELEVATION 1/4" = 1'-0"

DESIGN TREMITAS
ARCHITECTURE & PLANNING
(469)682-8915 tremitasdesign.com

BUILDER
TODD
BONNEAU HOMES
2710 Farmers Branch Lane
Dallas, TX 75234
PH.:972.345.9998
FAX:817.421.0491

Wands Residence

3515 Apple Valley Drive
Lot 6 Block 4
Brookhaven Hills Addition
Farmers Branch, Texas

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DRAWN BY
MICHAEL A. ADAMS
JEFFERY DING

CHECKED BY

ISSUE DATE
9-02-2014

REVISIONS

PRELIMINARY
SET NOT FOR
CONSTRUCTION

SHEET NUMBER
A4-1

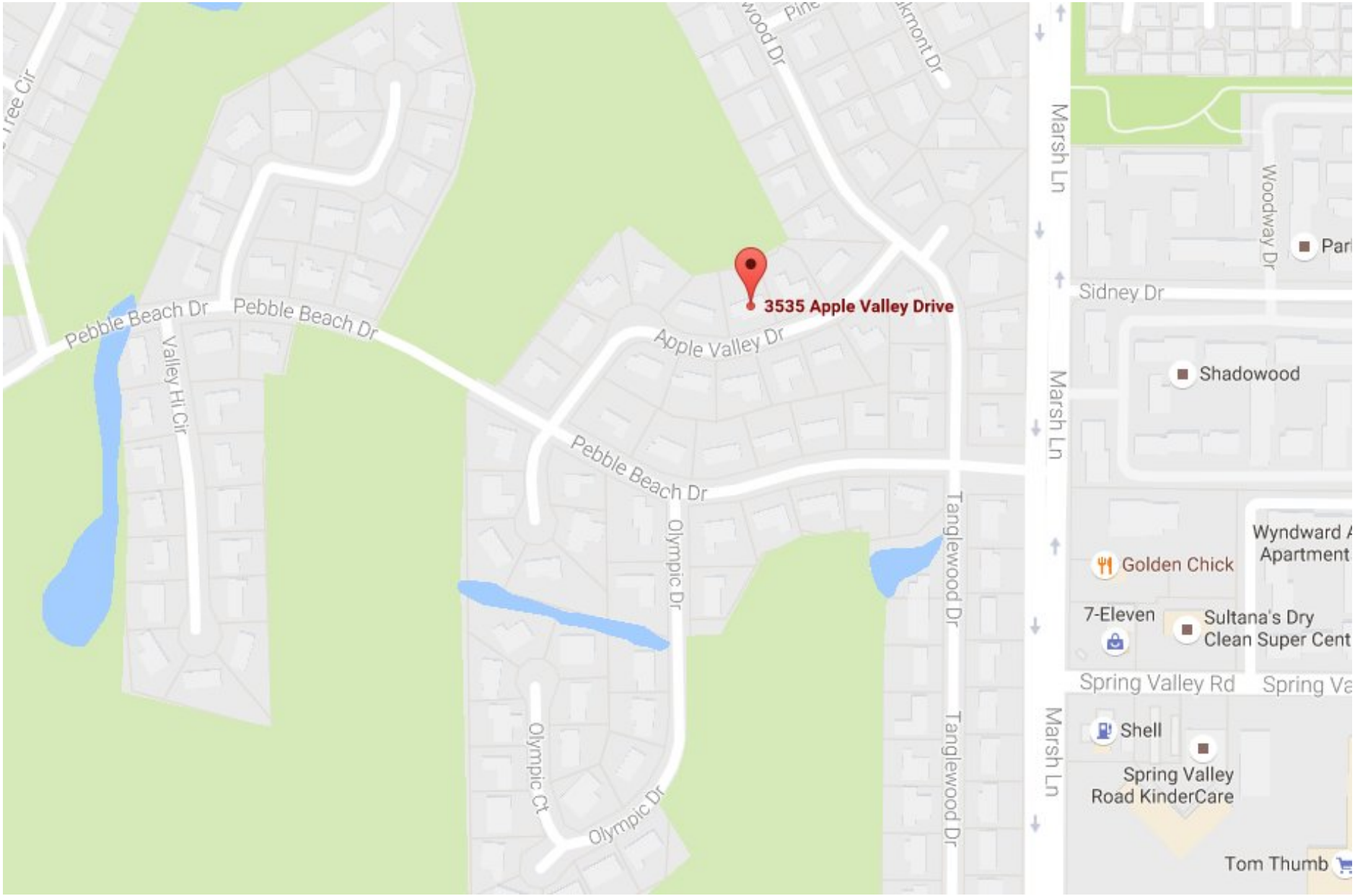
PROJECT NUMBER
16019

Demo Rebuild

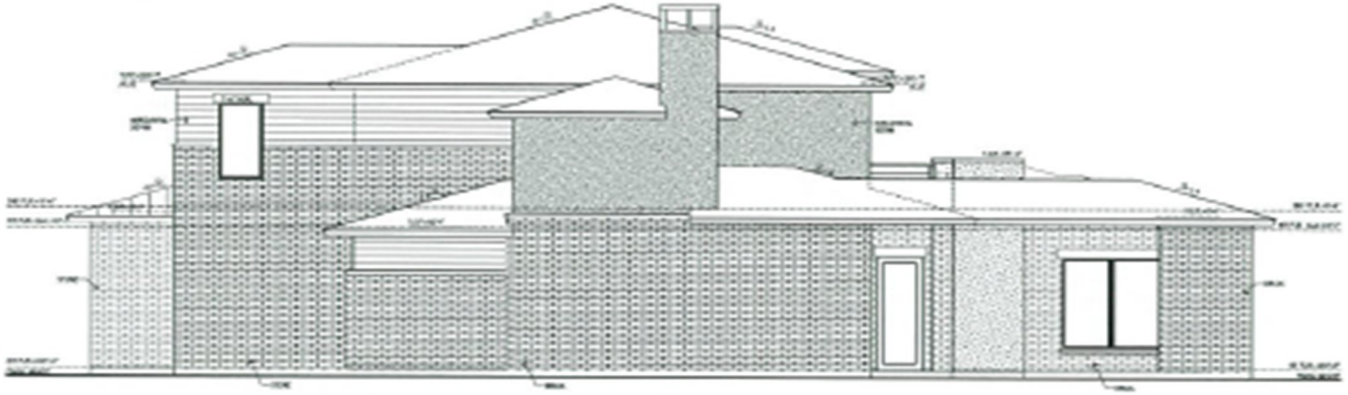
3535 APPLE VALLEY

TODD BONNEAU HOMES

FARMERS BRANCH


3535 Apple Valley Drive
Apple Valley Dr
Pebble Beach Dr
Pebble Beach Dr
Pebble Beach Dr
Valley Hi Cir
Olympic Dr
Olympic Ct
Olympic Dr
Tanglewood Dr
Tanglewood Dr
Marsh Ln
Marsh Ln
Marsh Ln
Woodway Dr
Sidney Dr
Shadowood
Golden Chick
7-Eleven
Sultana's Dry
Clean Super Cent
Spring Valley Rd
Shell
Spring Valley
Road KinderCare
Tom Thumb

PROPOSED FRONT ELEVATION



2 SIDE ELEVATION

1 ENTRY ELEVATION

CURRENT IMPROVEMENT VALUE:

$120,820
2007 SF

ESTIMATED NEW IMPROVEMENT VALUE:

$450,000
$3,901 SF

LAND VALUE:

$144,000

FARMERS BRANCH

RESOLUTION NO. 2016-122

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING EXECUTION OF A RESIDENTIAL DEMOLITION/REBUILD PROGRAM INCENTIVE AGREEMENT FOR THE OWNER OF PROPERTY AT 3535 APPLE VALLEY DRIVE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch has established a Residential Demolition/Rebuild Incentive Program pursuant to Chapter 380 of the Texas Local Government Code for the purpose of promoting the redevelopment of existing single family housing stock within the City ("the Incentive Program"); and

WHEREAS, the owner of the property generally located at 3535 Apple Valley Drive has made application for the Incentive Program; and

WHEREAS, City Administration, having reviewed the foregoing application, has determined that the demolition and reconstruction of the residential structure on the above described property qualifies for the Incentive Program; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the execution of an agreement setting forth the terms and conditions by which the owner of the above-described property will receive the benefits of the Incentive Program.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to execute on behalf of the City of Farmers Branch a Residential Demolition/Rebuild Program Incentive Agreement with Todd Bonneau Homes, LLC with respect to property generally known as 3535 Apple Field Drive, Farmers Branch, Texas, substantially in the form set forth in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 2. The City Manager has full authority to administer the above approved agreement on behalf of the City including, but not limited to, providing notices of default and termination as the City Manager may, from time to time, deem appropriate and necessary.

SECTION 3. This Resolution shall be effective immediately upon final passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:12/6/16: 81997)

Resolution No. 2016-122
Exhibit "A"

STATE OF TEXAS	§	
	§	**RESIDENTIAL DEMOLITION/REBUILD PROGRAM**
	§	**INCENTIVE AGREEMENT**
COUNTY OF DALLAS	§	

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Farmers Branch, Texas ("City"), and Todd Bonneau Homes, LLC, a Texas limited liability company ("Contractor"), acting by and through their respective authorized officers and representatives. City and Contractor and, where appropriate, Property Owner (as defined herein) are collectively referred to herein as "Parties" and separately as "Party."

WITNESSETH:

WHEREAS, Texas Local Government Code Chapter 380 allows City to provide incentives for the promotion of economic development; and

WHEREAS, the promotion of the redevelopment of existing housing stock within City's incorporated limits promotes economic development and is essential for City's continued economic growth and vitality; and

WHEREAS, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, as well as the expansion of existing business enterprises within City's incorporated limits, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and

WHEREAS, the promotion of the redevelopment of the housing stock within City's incorporated limits is a major contributing factor to City's growth, which in turn stimulates trade and commerce and reduces unemployment; and

WHEREAS, residential development and redevelopment will attract and encourage business relocation and expansion since business will look to the available housing stock to meet the needs of management and the work force; and

WHEREAS, City has determined that providing an economic development incentive in accordance with this Agreement will further City's objectives, will benefit City and City's inhabitants and will promote local economic development and stimulate business and commercial activity within City's incorporated limits; and

WHEREAS, Contractor is the owner of a one-family detached residential dwelling located at 3535 Apple Valley Drive, Farmers Branch, Texas (hereinafter defined as the "Residence"); and

WHEREAS, Contractor intends to demolish the Residence and construct a new one-family detached residential dwelling thereafter (hereinafter defined as the "New Residence") to be purchased by Property Owner after completion of construction; and

WHEREAS, Contractor has been approved as an eligible participant and the demolition of the Residence and the construction of the New Residence has been approved as an eligible project (hereinafter defined as an "Approved Project") under City's Demolition/Rebuild Property Tax Incentive Program (hereinafter defined as a "Program");

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article II
Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Annual Incentive(s)" means five (5) annual economic development incentives each in an amount equal to one hundred percent (100%) of the difference between the ad valorem taxes assessed by City against the New Residence for the applicable tax year and paid to City, and the amount of ad valorem taxes assessed by City against the Residence for the Base Year and paid to City, as calculated and determined by City, to be paid to Property Owner as set forth herein.

"Approved Project" means the approval of the demolition of the Residence and the construction of the New Residence as an approved project by City as being eligible for the incentives under the Program.

"Base Year" means January 1st of the calendar year immediately preceding the date of approval of the Project.

"City" means the City of Farmers Branch, Texas.

"Commencement Date" means the date fee simple title to the New Residence and the Land are conveyed by Contractor to the Property.

"Commencement of Construction" means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the Approved Project; and (ii) all necessary permits for the construction of the Approved Project have been issued by all applicable governmental authorities.

"Completion of Construction" means that (i) substantial completion of construction of the New Residence has occurred; and (ii) City has issued a final certificate of occupancy of certificate of inspection for the Approved Project.

"Effective Date" means the date this Agreement bears the signatures of the authorized representatives of all of the Parties.

"Event of Bankruptcy or Insolvency" means insolvency, appointment of receiver for Contractor or Property Owner and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor or Property Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Expiration Date" means April 1st of the first full calendar year following the sixth (6th) anniversary of the Commencement Date.

"Impositions" means all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Property Owner or any property or any business owned by Property Owner within City's incorporated limits.

"Land" means the real property located in the City of Farmers Branch, Texas, on which the Residence is located, but excluding any improvements, which property is described as Lot 6, Block 4, Brookhaven Hills, an addition to the City of Farmers Branch, Texas, according to the plat thereof recorded in Volume 51, Page 207, Map Records, Dallas County, Texas.

"New Residence" means a new one family detached dwelling to be constructed on the Land, as approved by City as an Approved Project, excluding the Land, which has a floor area of not less than 3900 square feet of air conditioned space and a Taxable Value (not including the Land) of not less than $450,000.00 as of January 1st of the calendar year following the date of Completion of Construction.

"Payment Request" means (a) with respect to the Annual Incentives paid pursuant to Section 3.1, below, a written request from Property Owner submitted to City on or before April 1st of each calendar year for the payment of the Annual Incentive accompanied by a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for the preceding tax year have been paid in full, and such other information as City may reasonably request; (b) with respect to the first installment of the Demolition Grant, a written request from Contractor submitted to City requesting payment of the first installment of the Demolition Grant accompanied by sufficient evidence that the Residence has been demolished and removed from the Land and that the Land is ready for construction of the New Residence; and (c) with respect to the second installment of the Demolition Grant, a written request from Contractor submitted to City requesting payment of the second installment of the Demolition Grant accompanied by a

copy of the certificate of occupancy or certificate of final inspection of the New Residence issued by City's Building Inspections Department.

"Project" means the demolition of the Residence and the construction of the New Residence on the Land.

"Property Owner" means the first person or people to whom Contractor conveys fee simple title of the New Residence after Completion of Construction of the New Residence and who use(s) the New Residence as a residence homestead.

"Residence" means the one family detached dwelling located on the Land as of the Effective Date.

"Residential Demolition/Rebuild Program" means the City of Farmers Branch Residential Demolition/Rebuild Incentive Program adopted by Resolution of the City Council, as amended.

"Taxable Value" means the appraised value of the Residence or the New Residence, as the case may be, as certified by the Dallas Central Appraisal District, or its successor entity, as of January 1st of a given year. The Parties agree that, as of the Effective Date, the Taxable Value of the Residence is $120,820.00.

Article III
Economic Development Incentive

3.1 Payment. Subject to Contractor's and Property Owner's continued satisfaction of the terms and conditions of this Agreement and the obligation of Property Owner to repay the Annual Incentives pursuant to Section 5.2 hereof, City agrees to provide the Annual Incentives to Property Owner to be paid not later than the thirtieth (30th) day after City receipt of the applicable Payment Request following April 1st of each calendar year, beginning April 1st of the calendar year immediately following the Commencement Date, provided City has timely received the ad valorem taxes assessed against the Land and the New Residence in full for the respective tax year. Property Owner shall submit a Payment Request to City on or before April 1st of each calendar year for the applicable Annual Incentive. For example, assume for illustration purposes only that a Project was approved by City in 2016 making 2016 the Base Year. Further assume that (i) City taxes assessed and paid for the Residence (improvements excluding the Land) for 2016 was $1,000 and (ii) the Approved Project was completed June 1, 2017, then the Commencement Date would be June 1, 2017. Further assume that City taxes assessed and paid for tax years 2018 is $2,000. Then the first Annual Incentive would be for the difference in City taxes assessed on the New Residence for tax year 2018 in the amount of $2,000 and the amount of City taxes assessed for the Base Year (2016) of $1,000 resulting in an Annual Incentive of $1,000, which would be paid not later than the thirtieth (30) day after City receipt of the applicable Payment Request following April 1, 2019, provided Property Owner submitted a Payment Request on or before April 1, 2019, which included a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for tax year 2018 have been paid in full.

3.2 Current Revenue. The Annual Incentives made hereunder shall be paid solely from lawfully available funds that have been appropriated by City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

3.3 Payment of Demolition Grant. City agrees to pay the Demolition Grant to Contractor in the amount of Fifteen Thousand and No/100 Dollars ($12,500.00) in two equal installments of $6250.00 each as follows:

(a) With respect to the first installment, not later than thirty (30) days after City's receipt of a Payment Request from Contractor, but in no case earlier than thirty (30) days prior to completion of demolition of the Residence and removal of all debris from the Land; and

(b) With respect to the second installment, not later than thirty (30) days after City's receipt of a Payment Request from Contractor, but in no case earlier than the thirtieth (30th) day after Completion of Construction of the New Residence.

City's obligation to pay the Demolition Grant, or any installment thereof, shall terminate if Completion of Construction of the New Residence does not occur on or before the second (2nd) anniversary of the Effective Date.

Article IV
Incentive Conditions

City's obligation to pay the Annual Incentives shall be conditioned upon Property Owner's continued compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

4.1 Inspections. Contractor and, upon assignment of this Agreement, Property Owner, agree to submit to periodic inspections of the Approved Project by City during the period beginning with the date of Commencement of Construction and ending on date of Completion of Construction.

4.2 Construction of the Approved Project. Subject to delays resulting from events of Force Majeure, Contractor and/or Property Owner shall, cause Completion of Construction of the Approved Project to occur on or before twenty-four (24) calendar months after the Effective Date.

4.3 Timely Sale of Land and New Residence. This Agreement and City's obligation to pay the Annual Incentive shall terminate if indefeasible fee simple title to the Land and New Residence is not conveyed by Contractor to a Property Owner on or before the second (2nd) anniversary of the Completion of Construction of the New Residence.

Article V
Termination

5.1 This Agreement shall terminate upon the occurrence of any one of the following:

(a) Mutual agreement of the Parties;

(b) The Expiration Date;

(c) If any Impositions owed to City or the State of Texas by Contractor or Property Owner shall become delinquent (provided, however, Contractor and Property Owner, as the case may be, retain the right to timely and properly protest and contest any such Impositions) and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;

(d) In the event Contractor and/or Property Owner breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof provided by City;

(e) If Contractor and/or Property Owner suffers an Event of Bankruptcy or Insolvency;

(f) If, subject to delays resulting from an event of Force Majeure, Commencement of Construction of the New Residence has not occurred within twelve (12) months after demolition and removal of the Residence from the Land and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;

(g) If any subsequent Federal or State legislation or any final, non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, in which case termination shall be immediate upon the effective date of said law or the date the judgment becomes non-appealable;

(h) If upon Completion of Construction of the New Residence, the New Residence contains less than 3900 square feet of air conditioned space as set forth in the definition of "New Residence" herein and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;

(i) If on January 1 following the date of Completion of Construction of the New Residence, the New Residence has a Taxable Value of less than $450,000.00 as set forth in the definition of "New Residence" herein and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;

(j) The failure to convey title to the Land and New Residence to Property Owner within the time provided in Section 4.3, without any requirement for notice from City to Contractor;

(k) The sale or transfer of title to the Land and/or the Residence without obtaining prior written consent from City for assignment of this Agreement to the new owner;

(l) The sale or transfer of title to the Land to a third party after the demolition of the Residence but before Commencement of Construction of the New Residence; or

(m) The termination of use of the New Residence by Property Owner as Property Owner's residential homestead.

5.2 In the event of termination by City pursuant to 5.1(c), (d), (e), (g), (j), (k), or (m), Property Owner shall immediately repay to City an amount equal to the total amount of Incentives paid to Property Owner, if any, prior to termination of this Agreement. If this Agreement is terminated pursuant to (i) Section 5.1(d) for breach of Section 4.2, (ii) Sections 5.1(f), (h), (i), or (l); or (iii) Section 4.3 and Section 5.1(j), Contractor shall, upon written demand from City, reimburse City the amount of the Demolition Grant, or portion thereof, paid to Contractor as of the date of termination of this Agreement.

Article VI
Miscellaneous

6.1 Assignment. This Agreement may not be assigned without the prior written consent of City. Notwithstanding the foregoing, Contractor may assign this Agreement to Property Owner without the prior consent of City, which assignment shall require Property Owner to assume and acknowledge in writing all duties and obligations of this Agreement; provided, however, such assignment without consent shall not become effective until (i) a deed conveying to Property Owner indefeasible fee simple title of the Land and the New Residence is recorded in the Real Property Records of Dallas County, Texas, and (ii) City is provided a copy of the recorded deed and the name, address, and phone number of Property Owner where notices may be sent pursuant to Section 6.6.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the heirs, successors and assigns of the Parties, including, but not limited to, successors in title to the Land.

6.3 Limitation on Liability. It is understood and agreed between the Parties that Property Owner, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.4 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.5 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.6 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Property Owner, to:

Todd Bonneau Homes, LLC
Attn: Todd O. Bonneau, Manager
2815 Valley View Lane, Suite 112
Farmers Branch, Texas 75234

If intended for City, to:

Attn: City Manager
City of Farmers Branch, Texas
13000 William Dodson Pkwy.
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard, Suite 1800
Dallas, Texas 75201

6.7 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.8 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.9 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.10 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the

intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.11 Recitals. The recitals to this Agreement are incorporated herein.

6.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.14 Employment of Undocumented Workers. During the term of this Agreement Property Owner agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), Property Owner shall repay the amount of the Annual Grants and any other funds received by Property Owner from City as of the date of such violation within one hundred twenty (120) days after the date Property Owner is notified by City of such violation, plus interest at the rate of four (4%) compounded annually from the date of violation until paid. Property Owner is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Property Owner or by a person with whom the Company contracts.

6.15 Future Incentives. Contractor acknowledges and agrees that the Residence and the New Residence, as the case may be, at 3535 Apple Valley Drive, Farmers Branch, Texas, will not be eligible for any other or further residential or other incentive offer now or hereafter by City.

[Signature Page to Follow]

Resolution No. 2016-122
Exhibit "A"

EXECUTED on this _____ day of _____, 2016.

City of Farmers Branch, Texas

By:_____
Charles S. Cox, City Manager

Attest:

By:_____
Amy Piukana, City Secretary

Approved As To Form:

By: Peter G Smith
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2016.

Property Owner

Todd Bonneau Homes, LLC

By:_____
Todd O. Bonneau, Manager

(kbl:12/6/16:81960)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-123

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.7

Consider approving Resolution No. 2016-123 authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of the property located at 12711 Epps Field; and take appropriate action.

BACKGROUND:
In an effort to improve the quality of housing opportunities in Farmers Branch, the City Council enacted a Residential Demolition/Rebuild Program pursuant to Chapter 380 of the Texas Local Government Code to encourage the redevelopment of existing single-family detached residential properties with the construction of new, higher value, single-family detached residential structures.

DISCUSSION:
Applicant Todd Bonneau Homes is applying for the new Demo Rebuild incentive. This includes an incentive that is based on the increase over the course of five (5) years in the City Property taxes paid on the difference between the original home appraised value (excluding the land value), as determined by the Dallas County Appraisal District. This option also includes a reimbursement of up to $15,000.00 of the cost of demolition of the original home following completion of demolition. Demolition of the original home and completion of construction and occupancy of the new home must be within 24 months of the effective date of the incentive agreement signed with the City. The current improvement value is $67,850 and the estimated new improvement value is estimated to be at least $400,000.

ATTACHMENTS:
1. Demo Rebuild Application 12711 Epps Field
2. Location Map 12711 Epps Field
3. Current Elevation 12711 Epps Field
4. Front Elevation of New Home 12711 Epps Field
5. 12711 Epps Field PPT
6. Resolution for 2016-123 12711 Epps Field

RECOMMENDATION:
Recommended motion by City Administration to approve Resolution No. authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of property located at 12711 Epps Field

POSSIBLE COUNCIL ACTION:
1. I move to approve Resolution 2016-123

2. I move to approve Resolution 2016-123 with modifications.
3. I move to table the issue for further study or take no action.

FARMERS BRANCH

Application Number D/R- _____

Date Received _____

CITY OF FARMERS BRANCH

RESIDENTIAL DEMOLITION/REBUILD INCENTIVE PROGRAM

APPLICATION AND POLICY

This application is for the Residential Demolition/Rebuild Incentive Program and is subject to the attached policy. By submitting this application the undersigned acknowledges that such person has read and agrees to comply with the policy. [1]

Section A: Applicant Information

Applicant's Full Name Todd Bonneau Homes LLC

Spouse or Co-Owner

Current Mailing Address 2815 Valley View #112

City Farmers Branch, State Tx Zip Code 75234

Phone Cell Fax

E-mail [2]

For additional information regarding this application or the Residential Incentives Program, please contact Allison Cook, Economic Development Manager at 972.919.2507.

[2] A person's home email address is confidential and may not be disclosed to the public by the city unless a citizen consents. By submission of this application you consent to the public disclosure of your email address unless requested otherwise in writing.

Section B: New Home Information

12711 EPPS FIELD RD.

Address of New Home (the structure to be demolished and to be replaced with new residence)[3]

FARMERS BRANCH TX 75234

City State Zip Code

$400,000

Estimated Value of new structure (value of improvement only, not inclusive of land)

Applicant shall include with the submittal of this application a copy of each of the following:

- Valid Texas driver's license or Texas I.D. card for identification verification
- Completed W-9 Form, including Social Security Number or taxpayer ID number, for tax purposes
- Elevations and floor plan of new home

Submit floor plan of new home via email to Allison Cook and/or Stephanie Hall:
Allison.cook@farmersbranchtx.gov
Stephanie.hall@farmersbranchtx.gov

Section C: Incentive Selection

I am applying for the following incentive:

Residential Demolition/Rebuild Incentive Program:
There are two (2) categories of residential structures that qualify for the program: (1) residential structures with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less, and (2) residential structures with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). The City will provide (i) a demolition incentive grant in the amount of Fifteen Thousand Dollars ($15,000.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less. The City will provide (ii) a demolition incentive grant in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). Each annual incentive shall be equal to one hundred percent (100%) of the difference between the City property taxes assessed and paid for the new improvements (the new residential structure excluding the land) for a given tax year and the City property taxes assessed and paid for the residential structure (prior to demolition) (excluding the land) for the tax year in which the structure was demolished (the "Base Year"). The five (5) annual incentives will be paid on April 1 of the calendar year beginning with April 1 of the calendar immediately following the calendar year in which a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. The applicable demolition incentive will be paid as follows: (i) fifty percent (50%) of the demolition incentive within thirty (30) days after completion of the demolition and submission of a request from the property owner/contractor for payment and (ii) the remaining

[3] If address for the residence for the demolition/rebuild program is different from the applicant's address in Section A , above.

fifty percent (50%) of the demolition incentive within thirty (30) days after a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. Failure to timely commence and complete construction of the new residential structure will require the applicant to repay the demolition incentive to the City.

In the event the participant is a builder or developer, the annual incentive will be paid to the first owner occupant of the new residence who acquires the new residence after the completion of construction of the new residence and not to the developer or builder provided the new residence is sold to the first owner occupant within twenty-four (24) months after completion of construction of the new residence. The annual incentive would be paid on April 1 of the calendar year beginning with April 1 of the calendar year immediately following the calendar year in which the owner occupies the new residence pursuant to a certificate of occupancy or completion issued by the City for such owner occupant.

The City may consider incentives under this program for the applicant intends to purchase adjacent residential properties, demolish both residential structures, re-plat the two lots into a single lot and construct a new residential structure on the single lot. In such event the combined assessed value of the residential structures to be demolished shall apply for the determination of the base year assessed value for the annual incentive provided the new residential structure to be constructed on the single lot will have an assessed value following construction of at least two times the combined assessed value of the residential structures to be demolished. In addition only one demolition incentive will be provided.

Section D: Acknowledgements

I hereby certify that I am the owner and occupant of the property described in Section B, above (or that I am a builder or developer and own the property described in Section B above) and that the information set forth herein and accompanying this application is true and correct to the best of my knowledge. I hereby acknowledge that I have read, understand and agree to comply with the City of Farmers Branch Residential Demolition/Rebuild Incentive Program policy. Any VIOLATION of the terms pr conditions of the Residential Demolition/Rebuild Incentive Program Policy or any false or misleading information in or submitted with this application shall constitute grounds for rejection of the application or termination of the reimbursement of the incentives, if approved, at the discretion of the City of Farmers Branch.

The undersigned acknowledges and agrees that the approval of the application shall not be deemed to be approval of any aspect of the construction of the proposed project, and that I am fully responsible for obtaining all required permits and inspections from the City of Farmers Branch, and that the demolition of the existing structure and the construction of the new residence complies with all applicable City rules, regulations and requirements.

I understand that my application will not be processed if it is incomplete. I further agree to provide any additional information for determining eligibility as requested by the City of Farmers Branch within the stated period of time for the submittal of the requested additional information, or the application will be deemed denied.

I understand that the approval of the application and participation in the program is discretionary with the City Council, and that the program may be suspended, terminated, or modified at any time regardless of availability of City funds or pending applications on file.

The undersigned acknowledges that if the application is approved that I (and my spouse or other joint owner of the property, if applicable) shall be required to enter into a contract with the City, for the payment of the incentive under the Residential Demolition/Rebuild Incentive Program and setting forth the Applicant(s) obligations under the Program.

Todd Bonneau Homes, LLC

Printed Name of Applicant

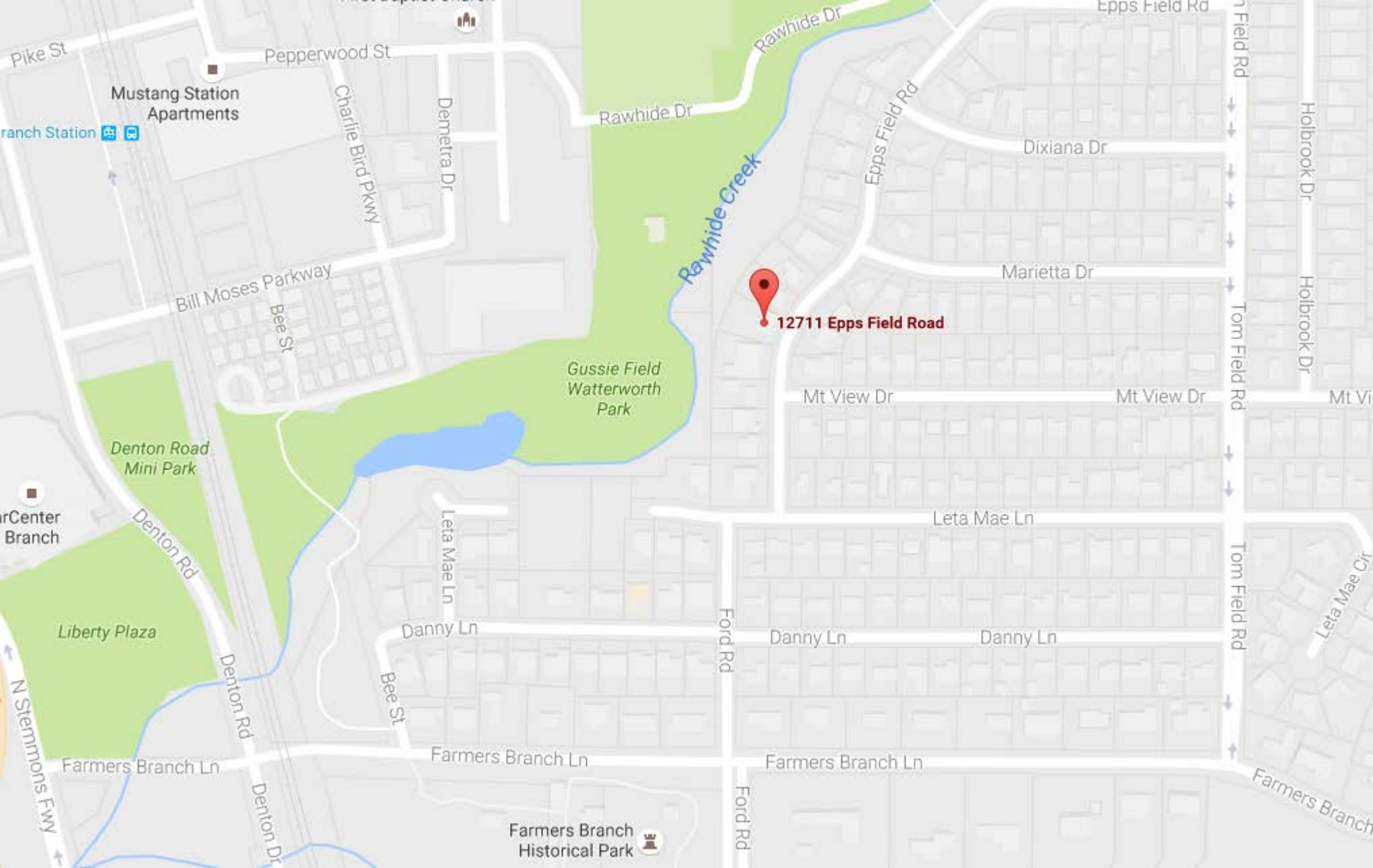
Signature 12.6.16

Date

Printed Name of Co-Applicant

Signature

Date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Mustang Station Apartments
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Charlie Bird Pkwy
Demetra Dr
Rawhide Dr
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Dixiana Dr
Holbrook Dr
Rawhide Creek
Marietta Dr
Bill Moses Parkway
Bee St
12711 Epps Field Road
Tom Field Rd
Gussie Field Watterworth Park
Mt View Dr
Mt View Dr
Denton Road Mini Park
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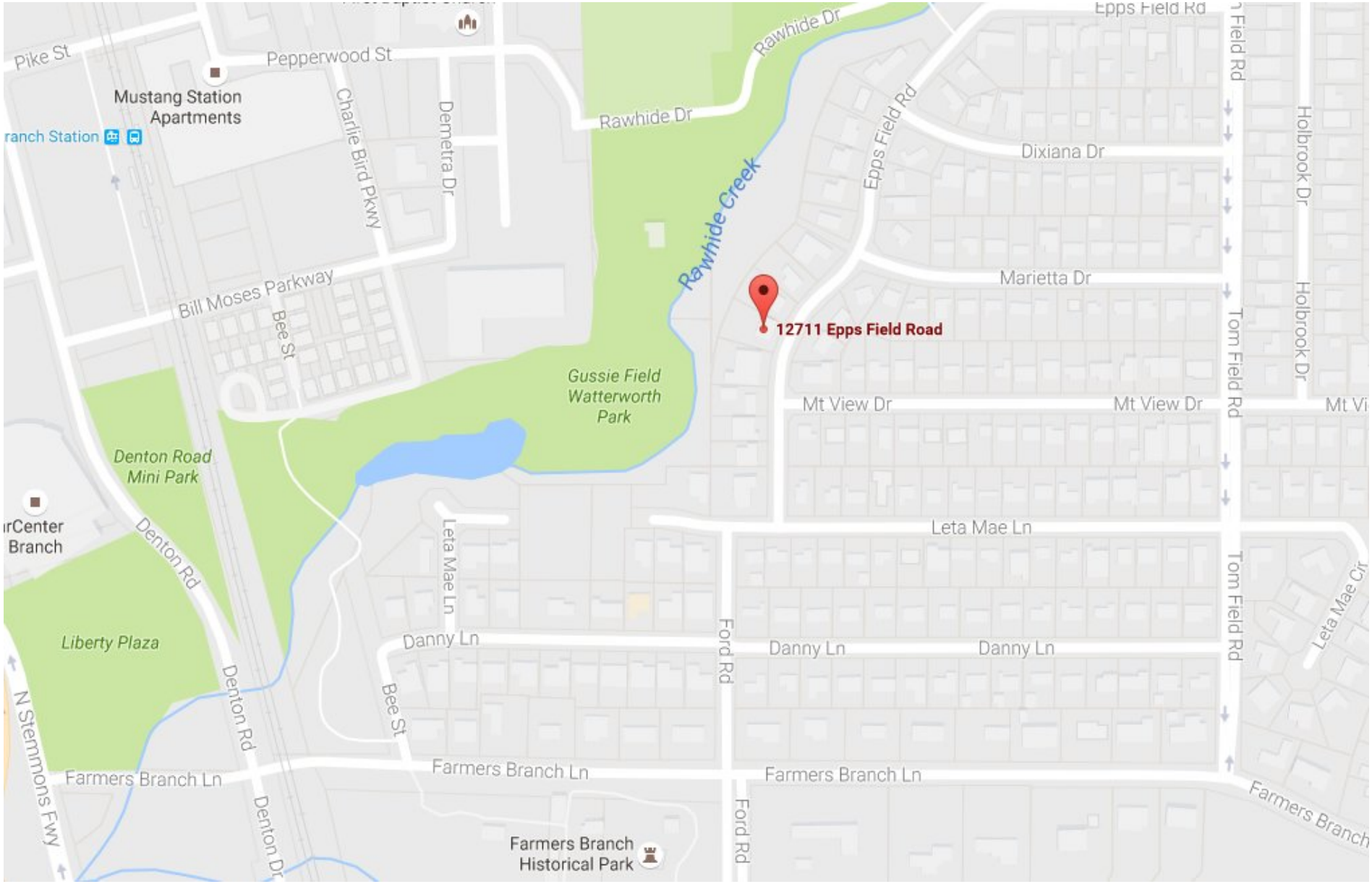
Ford Rd
Denton Dr
Farmers Branch Historical Park

Demo Rebuild

12711 EPPS FIELD

TODD BONNEAU HOMES

FARMERS BRANCH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Danny Ln
Ford Rd
Ford Rd
Bee St
Denton Rd
N Stemmons Fwy
Farmers Branch Ln
Farmers Branch Ln
Farmers Branch Ln
Farmers Branch
Denton Dr
Farmers Branch Historical Park

PROPOSED FRONT ELEVATION

CURRENT IMPROVEMENT VALUE:

$67,850
1487 SF

ESTIMATED NEW IMPROVEMENT VALUE:

$400,000
$3,900 SF

LAND VALUE:

$122,500

FARMERS BRANCH

RESOLUTION NO. 2016-123

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING EXECUTION OF A RESIDENTIAL DEMOLITION/REBUILD PROGRAM INCENTIVE AGREEMENT FOR THE OWNER OF PROPERTY AT 12711 EPPS FIELD ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch has established a Residential Demolition/Rebuild Incentive Program pursuant to Chapter 380 of the Texas Local Government Code for the purpose of promoting the redevelopment of existing single family housing stock within the City ("the Incentive Program"); and

WHEREAS, the owner of the property generally located at 12711 Epps Field Road has made application for the Incentive Program; and

WHEREAS, City Administration, having reviewed the foregoing application, has determined that the demolition and reconstruction of the residential structure on the above described property qualifies for the Incentive Program; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the execution of an agreement setting forth the terms and conditions by which the owner of the above-described property will receive the benefits of the Incentive Program.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to execute on behalf of the City of Farmers Branch a Residential Demolition/Rebuild Program Incentive Agreement with Todd Bonneau Homes, LLC and/or the Bonneau Family Living Trust with respect to property generally known as 12711 Epps Field Road, Farmers Branch, Texas 75234, substantially in the form set forth in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 2. The City Manager has full authority to administer the above approved agreement on behalf of the City including, but not limited to, providing notices of default and termination as the City Manager may, from time to time, deem appropriate and necessary.

SECTION 3. This Resolution shall be effective immediately upon final passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:12-6-16: 81960)

Resolution No. 2016-123
Exhibit "A"

STATE OF TEXAS	§	
	§	**RESIDENTIAL DEMOLITION/REBUILD PROGRAM**
	§	**INCENTIVE AGREEMENT**
COUNTY OF DALLAS	§	

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Farmers Branch, Texas ("City"), and Todd Bonneau Homes, LLC, a Texas limited liability company ("Contractor"), acting by and through their respective authorized officers and representatives. City and Contractor and, where appropriate, Property Owner (as defined herein) are collectively referred to herein as "Parties" and separately as "Party."

WITNESSETH:

WHEREAS, Texas Local Government Code Chapter 380 allows City to provide incentives for the promotion of economic development; and

WHEREAS, the promotion of the redevelopment of existing housing stock within City's incorporated limits promotes economic development and is essential for City's continued economic growth and vitality; and

WHEREAS, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, as well as the expansion of existing business enterprises within City's incorporated limits, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and

WHEREAS, the promotion of the redevelopment of the housing stock within City's incorporated limits is a major contributing factor to City's growth, which in turn stimulates trade and commerce and reduces unemployment; and

WHEREAS, residential development and redevelopment will attract and encourage business relocation and expansion since business will look to the available housing stock to meet the needs of management and the work force; and

WHEREAS, City has determined that providing an economic development incentive in accordance with this Agreement will further City's objectives, will benefit City and City's inhabitants and will promote local economic development and stimulate business and commercial activity within City's incorporated limits; and

WHEREAS, Contractor is the owner of a one-family detached residential dwelling located at 12711 Epps Field Road, Farmers Branch, Texas (hereinafter defined as the "Residence"); and

WHEREAS, Contractor intends to demolish the Residence and construct a new one-family detached residential dwelling thereafter (hereinafter defined as the "New Residence") to be purchased by Property Owner after completion of construction; and

WHEREAS, Contractor has been approved as an eligible participant and the demolition of the Residence and the construction of the New Residence has been approved as an eligible project (hereinafter defined as an "Approved Project") under City's Demolition/Rebuild Property Tax Incentive Program (hereinafter defined as a "Program");

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article II
Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Annual Incentive(s)" means five (5) annual economic development incentives each in an amount equal to one hundred percent (100%) of the difference between the ad valorem taxes assessed by City against the New Residence for the applicable tax year and paid to City, and the amount of ad valorem taxes assessed by City against the Residence for the Base Year and paid to City, as calculated and determined by City, to be paid to Property Owner as set forth herein.

"Approved Project" means the approval of the demolition of the Residence and the construction of the New Residence as an approved project by City as being eligible for the incentives under the Program.

"Base Year" means January 1st of the calendar year immediately preceding the date of approval of the Project.

"City" means the City of Farmers Branch, Texas.

"Commencement Date" means the date fee simple title to the New Residence and the Land are conveyed by Contractor to the Property.

"Commencement of Construction" means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the Approved Project; and (ii) all necessary permits for the construction of the Approved Project have been issued by all applicable governmental authorities.

"Completion of Construction" means that (i) substantial completion of construction of the New Residence has occurred; and (ii) City has issued a final certificate of occupancy of certificate of inspection for the Approved Project.

"Effective Date" means the date this Agreement bears the signatures of the authorized representatives of all of the Parties.

"Event of Bankruptcy or Insolvency" means insolvency, appointment of receiver for Contractor or Property Owner and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor or Property Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Expiration Date" means April 1st of the first full calendar year following the sixth (6th) anniversary of the Commencement Date.

"Impositions" means all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Property Owner or any property or any business owned by Property Owner within City's incorporated limits.

"Land" means the real property located in the City of Farmers Branch, Texas, on which the Residence is located, but excluding any improvements, which real property is described by metes and bounds in Exhibit "A," attached hereto and incorporated herein by reference.

"New Residence" means a new one family detached dwelling to be constructed on the Land, as approved by City as an Approved Project, excluding the Land, which has a floor area of not less than 3900 square feet of air conditioned space and a Taxable Value (not including the Land) of not less than $400,000.00 as of January 1st of the calendar year following the date of Completion of Construction.

"Payment Request" means (a) with respect to the Annual Incentives paid pursuant to Section 3.1, below, a written request from Property Owner submitted to City on or before April 1st of each calendar year for the payment of the Annual Incentive accompanied by a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for the preceding tax year have been paid in full, and such other information as City may reasonably request; (b) with respect to the first installment of the Demolition Grant, a written request from Contractor submitted to City requesting payment of the first installment of the Demolition Grant accompanied by sufficient evidence that the Residence has been demolished and removed from the Land and that the Land is ready for construction of the New Residence; and (c) with respect to the second installment of the Demolition Grant, a written request from Contractor submitted to City requesting payment of the second installment of the Demolition Grant accompanied by a copy of the certificate of occupancy or certificate of final inspection of the New Residence issued by City's Building Inspections Department.

"Project" means the demolition of the Residence and the construction of the New Residence on the Land.

"Property Owner" means the first person or people to whom Contractor conveys fee simple title of the New Residence after Completion of Construction of the New Residence and who use(s) the New Residence as a residence homestead.

"Residence" means the one family detached dwelling located on the Land as of the Effective Date.

"Residential Demolition/Rebuild Program" means the City of Farmers Branch Residential Demolition/Rebuild Incentive Program adopted by Resolution of the City Council, as amended.

"Taxable Value" means the appraised value of the Residence or the New Residence, as the case may be, as certified by the Dallas Central Appraisal District, or its successor entity, as of January 1st of a given year. The Parties agree that, as of the Effective Date, the Taxable Value of the Residence is $67,850.00.

Article III
Economic Development Incentive

3.1 Payment. Subject to Contractor's and Property Owner's continued satisfaction of the terms and conditions of this Agreement and the obligation of Property Owner to repay the Annual Incentives pursuant to Section 5.2 hereof, City agrees to provide the Annual Incentives to Property Owner to be paid not later than the thirtieth (30th) day after City receipt of the applicable Payment Request following April 1st of each calendar year, beginning April 1st of the calendar year immediately following the Commencement Date, provided City has timely received the ad valorem taxes assessed against the Land and the New Residence in full for the respective tax year. Property Owner shall submit a Payment Request to City on or before April 1st of each calendar year for the applicable Annual Incentive. For example, assume for illustration purposes only that a Project was approved by City in 2016 making 2016 the Base Year. Further assume that (i) City taxes assessed and paid for the Residence (improvements excluding the Land) for 2016 was $1,000 and (ii) the Approved Project was completed June 1, 2017, then the Commencement Date would be June 1, 2017. Further assume that City taxes assessed and paid for tax years 2018 is $2,000. Then the first Annual Incentive would be for the difference in City taxes assessed on the New Residence for tax year 2018 in the amount of $2,000 and the amount of City taxes assessed for the Base Year (2016) of $1,000 resulting in an Annual Incentive of $1,000, which would be paid not later than the thirtieth (30) day after City receipt of the applicable Payment Request following April 1, 2019, provided Property Owner submitted a Payment Request on or before April 1, 2019, which included a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for tax year 2018 have been paid in full.

3.2 Current Revenue. The Annual Incentives made hereunder shall be paid solely from lawfully available funds that have been appropriated by City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

3.3 Payment of Demolition Grant. City agrees to pay the Demolition Grant to Contractor in the amount of Fifteen Thousand and No/100 Dollars ($15,000.00) in two equal installments of $7500.00 each as follows:

(a) With respect to the first installment, not later than thirty (30) days after City's receipt of a Payment Request from Contractor, but in no case earlier than thirty (30) days prior to completion of demolition of the Residence and removal of all debris from the Land; and

(b) With respect to the second installment, not later than thirty (30) days after City's receipt of a Payment Request from Contractor, but in no case earlier than the thirtieth (30th) day after Completion of Construction of the New Residence.

City's obligation to pay the Demolition Grant, or any installment thereof, shall terminate if Completion of Construction of the New Residence does not occur on or before the second (2nd) anniversary of the Effective Date.

Article IV
Incentive Conditions

City's obligation to pay the Annual Incentives shall be conditioned upon Property Owner's continued compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

4.1 Inspections. Contractor and, upon assignment of this Agreement, Property Owner, agree to submit to periodic inspections of the Approved Project by City during the period beginning with the date of Commencement of Construction and ending on date of Completion of Construction.

4.2 Construction of the Approved Project. Subject to delays resulting from events of Force Majeure, Contractor and/or Property Owner shall, cause Completion of Construction of the Approved Project to occur on or before twenty-four (24) calendar months after the Effective Date.

4.3 Timely Sale of Land and New Residence. This Agreement and City's obligation to pay the Annual Incentive shall terminate if indefeasible fee simple title to the Land and New Residence is not conveyed by Contractor to a Property Owner on or before the second (2nd) anniversary of the Completion of Construction of the New Residence.

Article V
Termination

5.1 This Agreement shall terminate upon the occurrence of any one of the following:

(a) Mutual agreement of the Parties;

(b) The Expiration Date;

(c) If any Impositions owed to City or the State of Texas by Contractor or Property Owner shall become delinquent (provided, however, Contractor and Property Owner, as the case may be, retain the right to timely and properly protest and contest any such Impositions) and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;

(d) In the event Contractor and/or Property Owner breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof provided by City;

(e) If Contractor and/or Property Owner suffers an Event of Bankruptcy or Insolvency;

(f) If, subject to delays resulting from an event of Force Majeure, Commencement of Construction of the New Residence has not occurred within twelve (12) months after demolition and removal of the Residence from the Land and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;

(g) If any subsequent Federal or State legislation or any final, non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, in which case termination shall be immediate upon the effective date of said law or the date the judgment becomes non-appealable;

(h) If upon Completion of Construction of the New Residence, the New Residence contains less than 3900 square feet of air conditioned space as set forth in the definition of "New Residence" herein and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;

(i) If on January 1 following the date of Completion of Construction of the New Residence, the New Residence has a Taxable Value of less than $400,000.00 as set forth in the definition of "New Residence" herein and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;

(j) The failure to convey title to the Land and New Residence to Property Owner within the time provided in Section 4.3, without any requirement for notice from City to Contractor;

(k) The sale or transfer of title to the Land and/or the Residence without obtaining prior written consent from City for assignment of this Agreement to the new owner;

(l) The sale or transfer of title to the Land to a third party after the demolition of the Residence but before Commencement of Construction of the New Residence; or

(m) The termination of use of the New Residence by Property Owner as Property Owner's residential homestead.

5.2 In the event of termination by City pursuant to 5.1(c), (d), (e), (g), (j), (k), or (m), Property Owner shall immediately repay to City an amount equal to the total amount of Incentives paid to Property Owner, if any, prior to termination of this Agreement. If this Agreement is terminated pursuant to (i) Section 5.1(d) for breach of Section 4.2, (ii) Sections 5.1(f), (h), (i), or (l); or (iii) Section 4.3 and Section 5.1(j), Contractor shall, upon written demand from City, reimburse City the amount of the Demolition Grant, or portion thereof, paid to Contractor as of the date of termination of this Agreement.

Article VI
Miscellaneous

6.1 Assignment. This Agreement may not be assigned without the prior written consent of City. Notwithstanding the foregoing, Contractor may assign this Agreement to Property Owner without the prior consent of City, which assignment shall require Property Owner to assume and acknowledge in writing all duties and obligations of this Agreement; provided, however, such assignment without consent shall not become effective until (i) a deed conveying to Property Owner indefeasible fee simple title of the Land and the New Residence is recorded in the Real Property Records of Dallas County, Texas, and (ii) City is provided a copy of the recorded deed and the name, address, and phone number of Property Owner where notices may be sent pursuant to Section 6.6.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the heirs, successors and assigns of the Parties, including, but not limited to, successors in title to the Land.

6.3 Limitation on Liability. It is understood and agreed between the Parties that Property Owner, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.4 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.5 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.6 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Property Owner, to:

Todd Bonneau Homes, LLC
Attn: Todd O. Bonneau, Manager
2815 Valley View Lane, Suite 112
Farmers Branch, Texas 75234

If intended for City, to:

Attn: City Manager
City of Farmers Branch, Texas
13000 William Dodson Pkwy.
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard, Suite 1800
Dallas, Texas 75201

6.7 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.8 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.9 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.10 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal,

invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.11 Recitals. The recitals to this Agreement are incorporated herein.

6.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.14 Employment of Undocumented Workers. During the term of this Agreement Property Owner agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), Property Owner shall repay the amount of the Annual Grants and any other funds received by Property Owner from City as of the date of such violation within one hundred twenty (120) days after the date Property Owner is notified by City of such violation, plus interest at the rate of four (4%) compounded annually from the date of violation until paid. Property Owner is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Property Owner or by a person with whom the Company contracts.

6.15 Future Incentives. Contractor acknowledges and agrees that the Residence and the New Residence, as the case may be, at 12711 Epps Field Road, Farmers Branch, Texas, will not be eligible for any other or further residential or other incentive offer now or hereafter by City.

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2016.

City of Farmers Branch, Texas

By:_____
Charles S. Cox, City Manager

Attest:

By:_____
Amy Piukana, City Secretary

Approved As To Form:

By: Peter G Smith
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2016.

Property Owner

Todd Bonneau Homes, LLC

By:_____
Todd O. Bonneau, Manager

Resolution No. 2016-123
Exhibit "A"

Commonly referred to as 12711 Epps Field Road, Farmers Branch, TX, and

BEING PART OF Lots 12 and 13 of VALLEY VIEW ADDITION No. 6, an Addition to the Town of Farmers Branch, Dallas County, Texas, according to the Map thereof filed for record in the office of the County Clerk of Dallas County, Texas, on February 19, 1953, and said part being more fully described as follows:

BEGINNING at a point in the West line of Epps Field Road, said point being 27 feet South of the Northeast corner of said Lot 13;

THENCE in a Westerly direction 140.47 feet to a point in the West line of said Lot 13, said point being 38.03 feet South of the Northwest corner of said Lot 13;

THENCE in a Northerly direction 101.4 feet along the West line of said Lots 12 and 13 to a point for corner, said point being 21.12 feed South of the Northwest corner of said Lot 12;

THENCE in an Easterly direction 140.47 feet to a point in the said West line of Epps Field Road, said point being 15.0 feet South of the Northeast corner of said Lot 12;

THENCE South 72.0 feet along said West line of Epps Field Road and East line of said Lot 12 and Lot 13 to the PLACE OF BEGINNING.

(kbl:12/4/16:81960)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-128

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.8

Consider approving Resolution No. 2016-128 authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of the property located at 14340 Olympic Drive; and take appropriate action.

BACKGROUND:
In an effort to improve the quality of housing opportunities in Farmers Branch, the City Council enacted a Residential Demolition/Rebuild Program pursuant to Chapter 380 of the Texas Local Government Code to encourage the redevelopment of existing single-family detached residential properties with the construction of new, higher value, single-family detached residential structures.

DISCUSSION:
Applicant Michael Shane Leonard is applying for the new Demo Rebuild incentive. This includes an incentive that is based on the increase over the course of five (5) years in the City Property taxes paid on the difference between the original home appraised value (excluding the land value), as determined by the Dallas County Appraisal District. This option also includes a reimbursement of up to $12,500.00 of the cost of demolition of the original home following completion of demolition.

ATTACHMENTS:
1. Demo Rebuild Application 14340 Olympic Drive
2. Location Map 14340 Olympic Drive
3. Current Elevation 14340 Olympic Drive
4. Front Elevation of New Home 14340 Olympic Drive
5. 14340 Olympic Drive PPT
6. Resolution for 14340 Olympic Drive

RECOMMENDATION:
Recommended motion by City Administration to approve Resolution No. authorizing execution of a Residential Demolition/Rebuild Program Incentive Agreement for the owner of property located at 14340 Olympic Drive

POSSIBLE COUNCIL ACTION:
1. I move to approve Resolution 2016-128
2. I move to approve Resolution 2016-128 with modifications.

3. I move to table the issue for further study or take no action.

FARMERS BRANCH

Application Number D/R- _____

Date Received _____

CITY OF FARMERS BRANCH

RESIDENTIAL DEMOLITION/REBUILD INCENTIVE PROGRAM

APPLICATION AND POLICY

This application is for the Residential Demolition/Rebuild Incentive Program and is subject to the attached policy. By submitting this application the undersigned acknowledges that such person has read and agrees to comply with the policy. [1]

Section A: Applicant Information

Michael Shane Leonard
Applicant's Full Name

Kelly Lee Leonard
Spouse or Co-Owner

14340 Olympic Dr.
Current Mailing Address

Farmers Branch | TX. | 75234
City | State | Zip Code

Phone | Cell | Fax

E-mail [2]

For additional information regarding this application or the Residential Incentives Program, please contact Allison Cook, Economic Development Manager at 972.919.2507.

[2] A person's home email address is confidential and may not be disclosed to the public by the city unless a citizen consents. By submission of this application you consent to the public disclosure of your email address unless requested otherwise in writing.

(kbl:8/25/14:67780)

Section B: New Home Information

14340 Olympic Dr.

Address of New Home (the structure to be demolished and to be replaced with new residence)[3]

Farmers Branch TX 75234

City State Zip Code

700,000

Estimated Value of new structure (value of improvement only, not inclusive of land)

Applicant shall include with the submittal of this application a copy of each of the following:

- Valid Texas driver's license or Texas I.D. card for identification verification
- Completed W-9 Form, including Social Security Number or taxpayer ID number, for tax purposes
- Elevations and floor plan of new home

Submit floor plan of new home via email to Allison Cook and/or Stephanie Hall:
Allison.cook@farmersbranchtx.gov
Stephanie.hall@farmersbranchtx.gov

Section C: Incentive Selection

I am applying for the following incentive:

Residential Demolition/Rebuild Incentive Program:
There are two (2) categories of residential structures that qualify for the program: (1) residential structures with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less, and (2) residential structures with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). The City will provide (i) a demolition incentive grant in the amount of Fifteen Thousand Dollars ($15,000.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of One Hundred Thousand Dollars ($100,000.00) or less. The City will provide (ii) a demolition incentive grant in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00) and (ii) five (5) annual consecutive economic development incentive grants for residential structures to be demolished with an assessed value of more than One Hundred Thousand Dollars ($100,000.00). Each annual incentive shall be equal to one hundred percent (100%) of the difference between the City property taxes assessed and paid for the new improvements (the new residential structure excluding the land) for a given tax year and the City property taxes assessed and paid for the residential structure (prior to demolition) (excluding the land) for the tax year in which the structure was demolished (the "Base Year"). The five (5) annual incentives will be paid on April 1 of the calendar year beginning with April 1 of the calendar immediately following the calendar year in which a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. The applicable demolition incentive will be paid as follows: (i) fifty percent (50%) of the demolition incentive within thirty (30) days after completion of the demolition and submission of a request from the property owner/contractor for payment and (ii) the remaining

[3] If address for the residence for the demolition/rebuild program is different from the applicant's address in Section A, above.

fifty percent (50%) of the demolition incentive within thirty (30) days after a certificate of occupancy or completion is issued by the City following completion of construction of the new residential structure. Failure to timely commence and complete construction of the new residential structure will require the applicant to repay the demolition incentive to the City.

In the event the participant is a builder or developer, the annual incentive will be paid to the first owner occupant of the new residence who acquires the new residence after the completion of construction of the new residence and not to the developer or builder provided the new residence is sold to the first owner occupant within twenty-four (24) months after completion of construction of the new residence. The annual incentive would be paid on April 1 of the calendar year beginning with April 1 of the calendar year immediately following the calendar year in which the owner occupies the new residence pursuant to a certificate of occupancy or completion issued by the City for such owner occupant.

The City may consider incentives under this program for the applicant intends to purchase adjacent residential properties, demolish both residential structures, re-plat the two lots into a single lot and construct a new residential structure on the single lot. In such event the combined assessed value of the residential structures to be demolished shall apply for the determination of the base year assessed value for the annual incentive provided the new residential structure to be constructed on the single lot will have an assessed value following construction of at least two times the combined assessed value of the residential structures to be demolished. In addition only one demolition incentive will be provided.

Section D: Acknowledgements

I hereby certify that I am the owner and occupant of the property described in Section B, above (or that I am a builder or developer and own the property described in Section B above) and that the information set forth herein and accompanying this application is true and correct to the best of my knowledge. I hereby acknowledge that I have read, understand and agree to comply with the City of Farmers Branch Residential Demolition/Rebuild Incentive Program policy. Any VIOLATION of the terms pr conditions of the Residential Demolition/Rebuild Incentive Program Policy or any false or misleading information in or submitted with this application shall constitute grounds for rejection of the application or termination of the reimbursement of the incentives, if approved, at the discretion of the City of Farmers Branch.

The undersigned acknowledges and agrees that the approval of the application shall not be deemed to be approval of any aspect of the construction of the proposed project, and that I am fully responsible for obtaining all required permits and inspections from the City of Farmers Branch, and that the demolition of the existing structure and the construction of the new residence complies with all applicable City rules, regulations and requirements.

I understand that my application will not be processed if it is incomplete. I further agree to provide any additional information for determining eligibility as requested by the City of Farmers Branch within the stated period of time for the submittal of the requested additional information, or the application will be deemed denied.

I understand that the approval of the application and participation in the program is discretionary with the City Council, and that the program may be suspended, terminated, or modified at any time regardless of availability of City funds or pending applications on file.

The undersigned acknowledges that if the application is approved that I (and my spouse or other joint owner of the property, if applicable) shall be required to enter into a contract with the City, for the payment of the incentive under the Residential Demolition/Rebuild Incentive Program and setting forth the Applicant(s) obligations under the Program.

Michael Shane Leonard
Printed Name of Applicant

Shane Leonard — 12/6/16
Signature — Date

Kelly Lee Leonard
Printed Name of Co-Applicant

12/6/16
Signature — Date

Farmers Branch Residential Incentive Grant Program

Residential Demolition/Rebuild Incentive Program

Purpose. Chapter 380 of the Texas Local Government Code authorizes the City to provide incentives consisting of loans and grants of city funds, use of city personnel, facilities and services with or without charge, for the promotion of economic development. The availability of quality housing stock in the City of Farmers Branch encourages the relocation of businesses, attracts new businesses, and promotes expansion of existing businesses to and within the City, all of which in turn will stimulate growth, create jobs, and increase property and sales tax revenues. Subject to available funding and the conditions of this program, the City desires to provide economic development incentive grants pursuant to Chapter 380 of the Texas Local Government Code to encourage the redevelopment of existing one-family detached residential properties with the construction of new, higher value, one-family detached residential structures.

Eligible Applicants and Projects. This program is available to people who own and occupy a one family detached dwelling (a "residence") in the City who agree to demolish the existing residence and to construct a new residence at the same location. The eligible residence owner shall be required to enter into an agreement for the program prepared by and approved by the City Attorney. Additionally, a developer or builder may qualify for the program if the developer or builder owns a single-family residence in the City and agrees to demolish the residence and construct a new single family residence at the same location; provided, however, any incentive to be paid pursuant the program agreement will be paid to the first person that owns and occupies the new residence and not the developer or builder. The eligible developer or builder shall be required to enter into an agreement with the City for the program prepared by and approved by the City Attorney. In the case of a developer or builder, the program agreement will be assignable to the first owner occupant of the new residence within 24 months after completion of construction of the new residence, who will then be entitled to payment of the incentives. The incentive will no longer be available, if the owner or developer fails to sell and transfer the new residence to an owner/occupant within the twenty-four (24) month period.

The demolition of the existing residence and the construction of a new residence must be completed, and a certificate of occupancy or completion issued by the City for the new residence, not later than twenty-four (24) months after the effective date of the incentive agreement entered with the City following approval by the City of an eligible project for participation in the program. The program participants will be required to consent to periodic City inspections of the demolition of the existing residence and the construction of the new residence. Property owners who are delinquent in payment of property taxes or other fees due to the City are ineligible to participate in the program, and the program agreement will terminate if the property owner is delinquent in payment of property taxes or other fees due to the City.

The property owner must be approved as an eligible participant in the program and shall have entered into the program agreement with the City prior to any demolition work relating to the existing residence and prior to the construction of the new residence. A project is not eligible if work commences prior to approval of the project by the City Council.

There are two options with respect to the incentives which may be granted pursuant to the Program. The eligible participant must select which option the participant desires to pursue at the time of application. At not time may a property qualify for more than one incentive pursuant to the Program.

Exclusions from Base Year Assessed Value. In establishing the Base Year Assessed Value for the property for both Program Option 1 and Program Option 2, valuation freezes, exemptions or reductions to which a current or former owner or occupant of the property is entitled because of age, disability, or veteran status shall not be taken into consideration. Furthermore, in determining the Base Year amount of City property taxes paid, the base year amount paid will be determined as if no exemptions allowed pursuant to Chapter 11 of the Texas Tax Code are applied unless the same exemption(s) will be also be in effect to reduce the amount of city property tax due for the tax years in which the incentive will be paid.

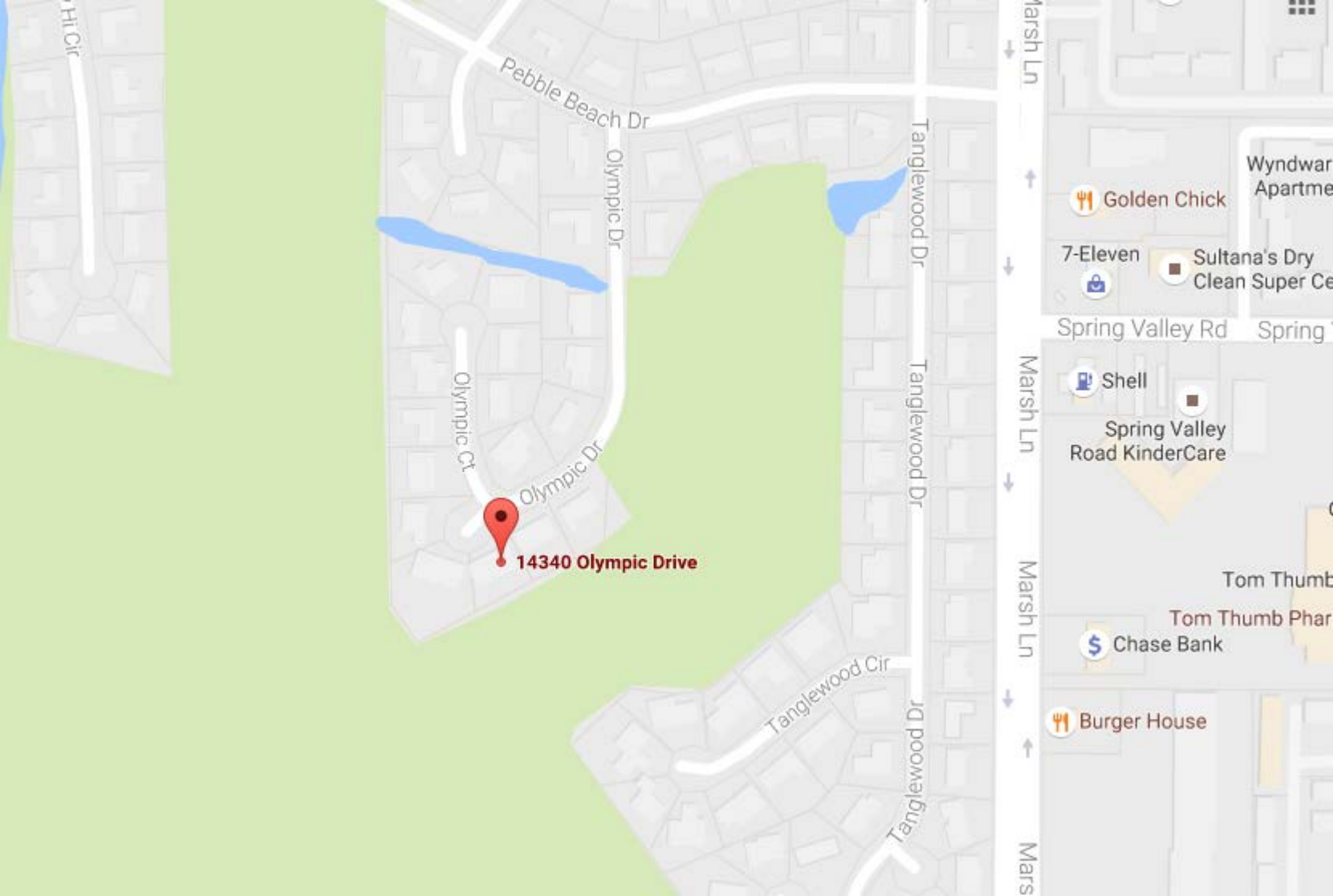
Incentive Agreement. The incentive will be provided pursuant an agreement between the City and the property owner (or developer/builder, as the case may be) to be prepared and approved by the City Attorney. The incentive agreement is not transferable and may not be assigned if the property is sold or transferred (including a life estate) to a subsequent owner, except in the case of a builder or developer as set forth above. In the event the new residence is sold or transferred, the incentive agreement shall automatically terminate and no further incentives will be paid.

Application. A person desiring to participate in the program shall submit an application to the Director of Economic Development on a form provided by the City prior to commencement of any demolition of the existing residence on the property. The application shall require the property owner to provide the details of the proposed demolition/rebuild project, the estimated project costs and such other information as the City may require.

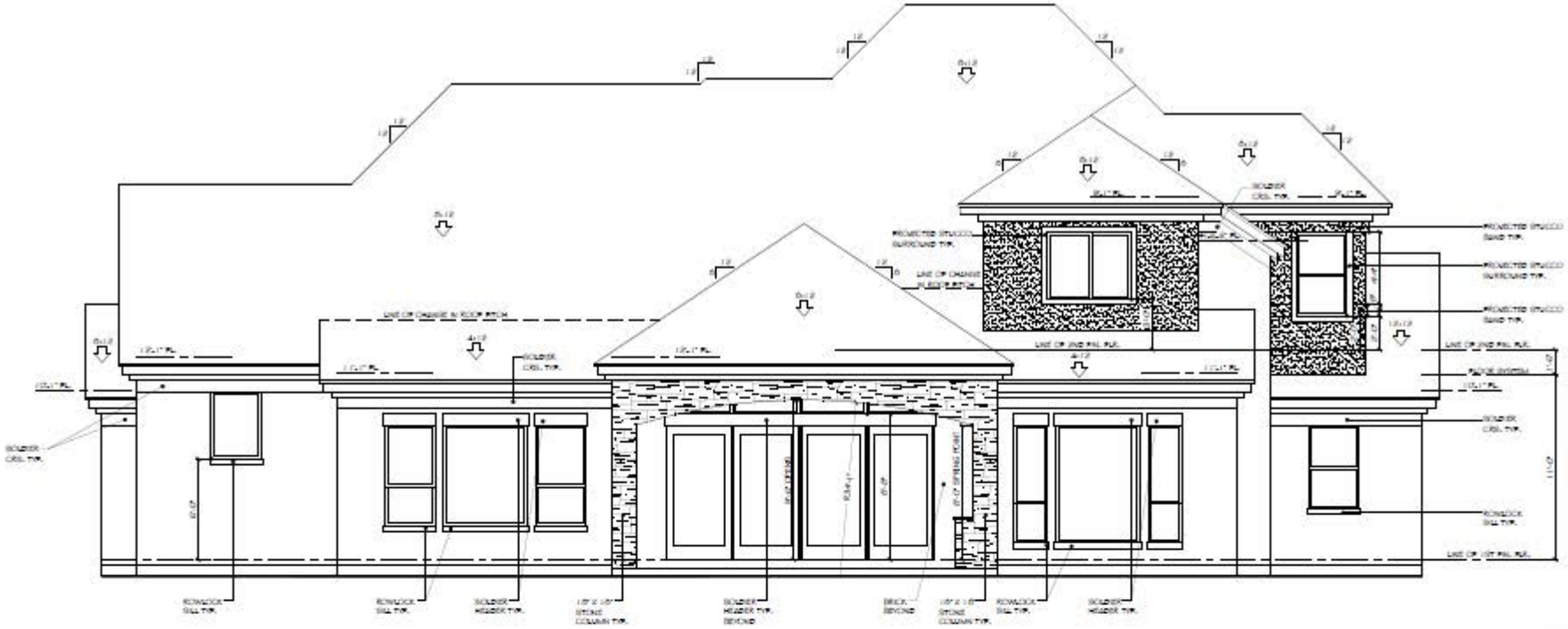
Review Process. The application shall be reviewed by the Director of Economic Development (or designee) who shall determine whether the applicant and the proposed project qualify for the program. The Director of Economic Development shall review a completed application not later than fifteen (15) business days after submission. If an application is incomplete or if additional information is required, the Director of Economic Development shall notify the property owner in writing of such request with a deadline to submit such requested information. The property owner shall provide a complete application or the requested additional information, as the case may be, within the stated time period or the application shall be deemed withdrawn. The Director of Economic

Development will notify the property owner in writing if the application is denied or approved, and if approved, the Director will provide the required incentive agreement. The property owner will be required to execute and return the incentive contract within fifteen (15) business days after receipt from the City.

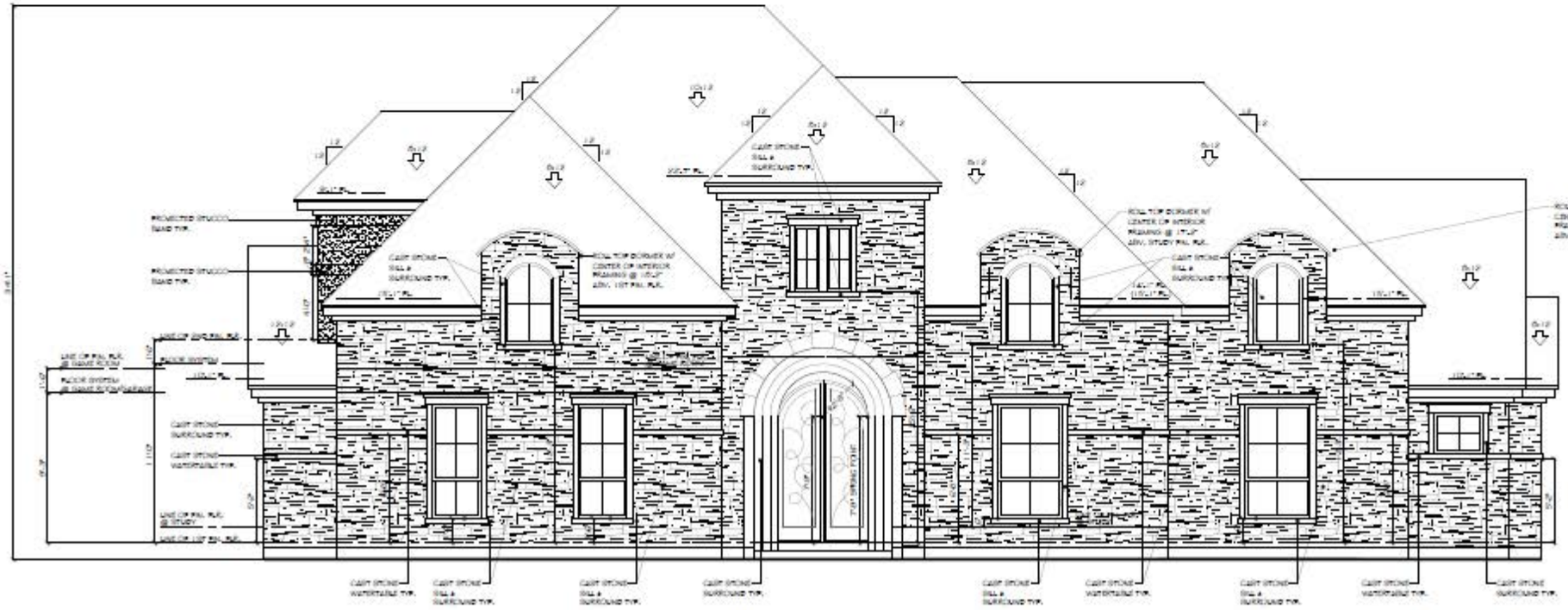
Incentive Payment. Except as noted below, the annual incentive for Program Option 1 will be paid to the property owner pursuant to the incentive agreement on April 1 of the calendar year beginning with April 1 of the calendar immediately following the first full calendar year following the date the City issues a certificate of completion following the completion of an approved project. In a year in which the property owner decides to pay property taxes on the property by utilizing the split-payment method, payment of the incentive will not be made until the earliest of (a) April 1, (b) 60 days following delivery to the City of paid tax receipts showing that all property taxes have been timely paid, or (c) September 1. The amount of the incentive shall be determined by the Director of Economic Development, whose decision shall be final in all respects.


Pebble Beach Dr
Olympic Dr
Olympic Ct
Olympic Dr
14340 Olympic Drive
Tanglewood Dr
Tanglewood Dr
Tanglewood Cir
Tanglewood Dr
Marsh Ln
Marsh Ln
Marsh Ln
Golden Chick
7-Eleven
Sultana's Dry
Clean Super Ce
Spring Valley Rd
Shell
Spring Valley
Road KinderCare
Tom Thumb
Tom Thumb Phar
Chase Bank
Burger House

1. Any alterations made to the drawings must be approved by the architect prior to the start of construction.
2. Refer to all local codes for plumbing, mechanical, & electrical requirements.
3. Builder to verify all notes & dimensions prior to construction.



REAR ELEVATION
1/4" = 1'-0" scale



EXTERIOR MATERIALS LEGEND	
	BRICK AS SELECTED
	STONE AS SELECTED
	STUCCO (per Ordinance 5267
	COMPOSITE SHINGLE ROOF

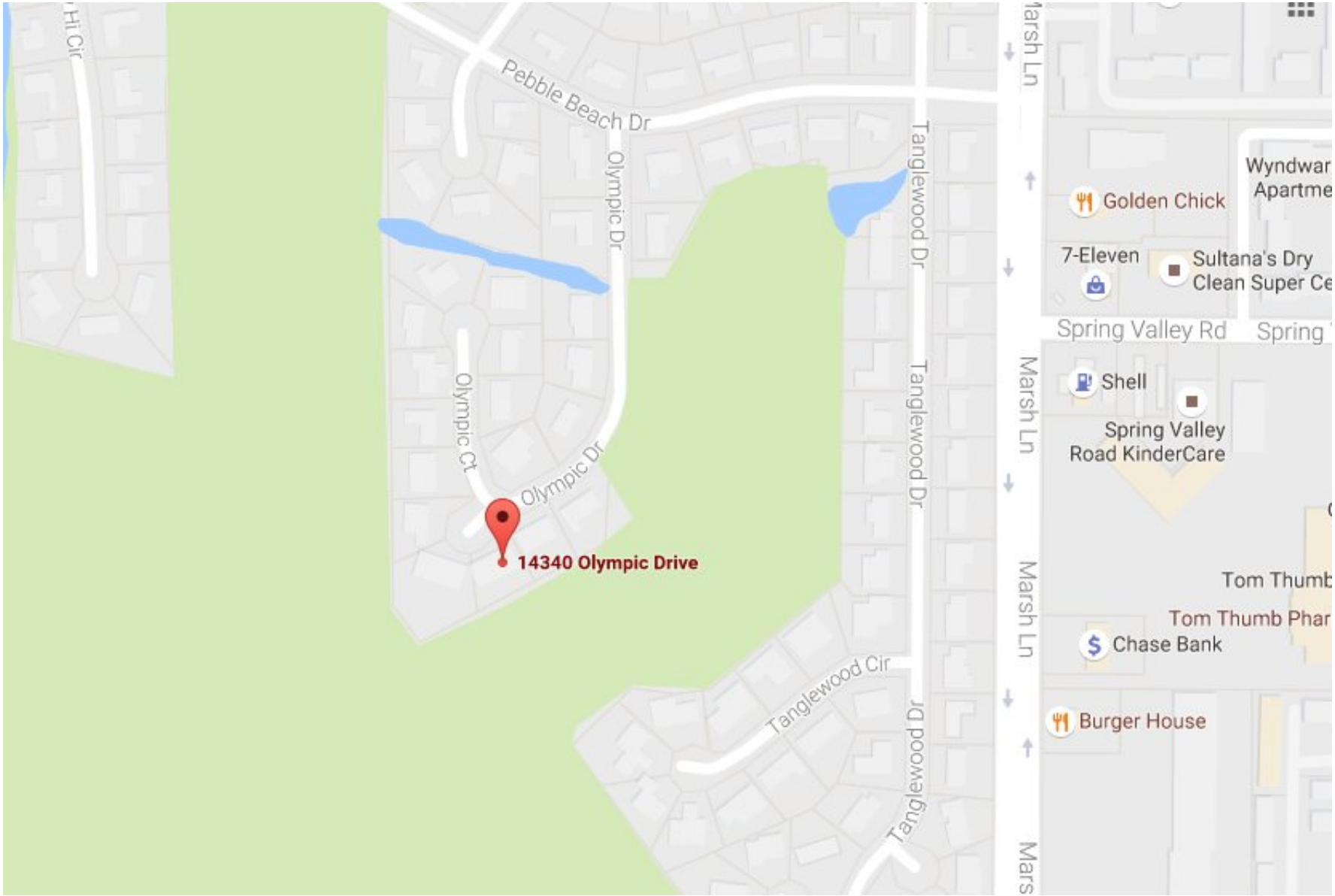
FRONT ELEVATION
1/4" = 1'-0" scale

Demo Rebuild

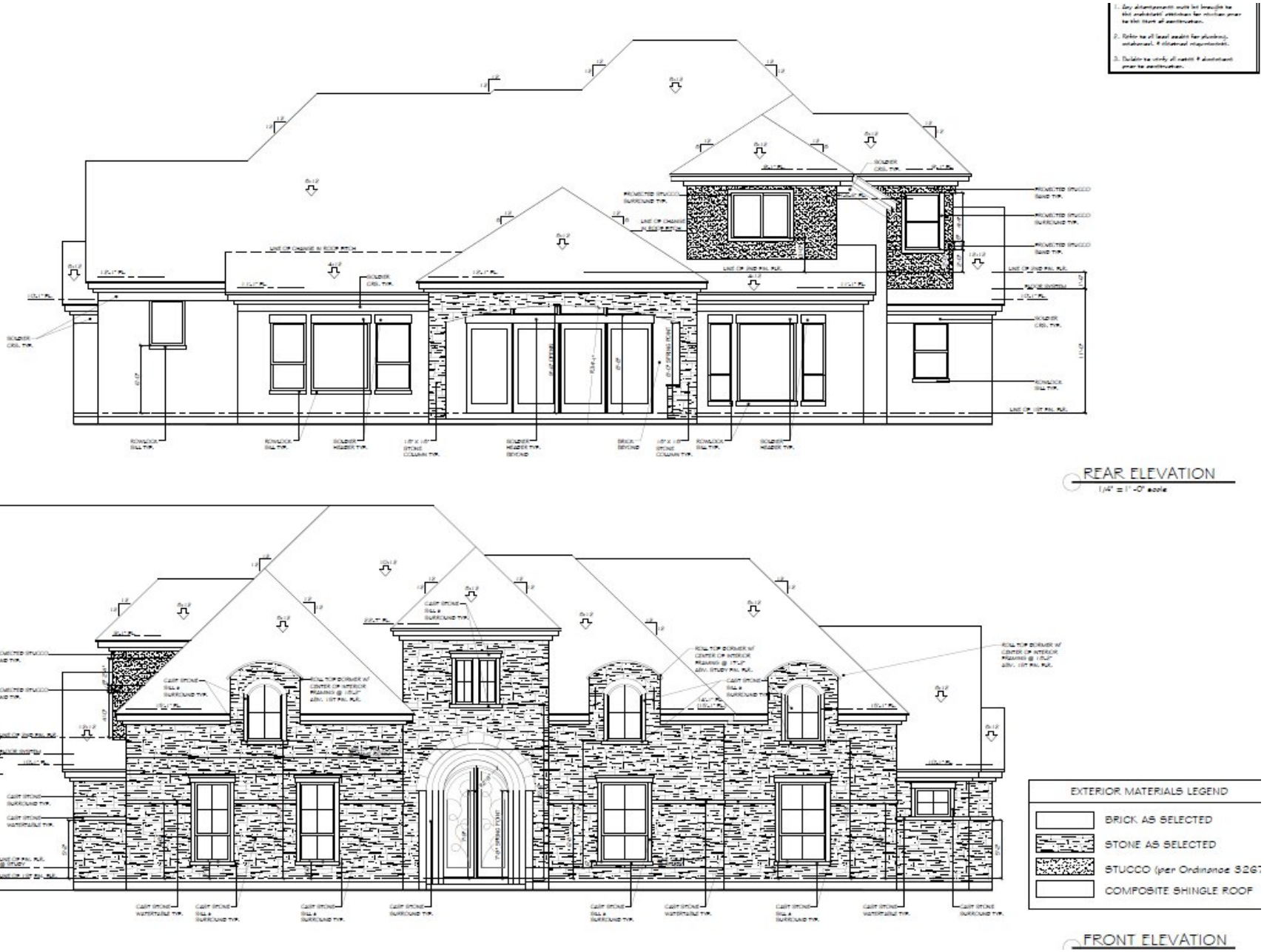
14340 OLYMPIC DRIVE

MICHAEL SHANE LEONARD

FARMERS BRANCH


Pebble Beach Dr
Olympic Dr
Olympic Ct
Olympic Dr
14340 Olympic Drive
Tanglewood Dr
Tanglewood Dr
Tanglewood Cir
Tanglewood Dr
Marsh Ln
Marsh Ln
Marsh Ln
Golden Chick
7-Eleven
Sultana's Dry
Clean Super Ce
Spring Valley Rd
Shell
Spring Valley
Road KinderCare
Tom Thumb
Tom Thumb Phar
Chase Bank
Burger House

PROPOSED FRONT ELEVATION



CURRENT IMPROVEMENT VALUE:

$162,930
2234 SF

ESTIMATED NEW IMPROVEMENT VALUE:

$600,000
$4,000 SF

LAND VALUE:

$144,000

FARMERS BRANCH

RESOLUTION NO. 2016-128

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING EXECUTION OF A RESIDENTIAL DEMOLITION/REBUILD PROGRAM INCENTIVE AGREEMENT FOR THE OWNER OF PROPERTY AT 14340 OLYMPIC DRIVE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch has established a Residential Demolition/Rebuild Incentive Program pursuant to Chapter 380 of the Texas Local Government Code for the purpose of promoting the redevelopment of existing single family housing stock within the City ("the Incentive Program"); and

WHEREAS, the owner of the property generally located at 14340 Olympic Drive has made application for the Incentive Program; and

WHEREAS, City Administration, having reviewed the foregoing application, has determined that the demolition and reconstruction of the residential structure on the above described property qualifies for the Incentive Program; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the execution of an agreement setting forth the terms and conditions by which the owner of the above-described property will receive the benefits of the Incentive Program.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to execute on behalf of the City of Farmers Branch a Residential Demolition/Rebuild Program Incentive Agreement with Michael Shane Leonard and Kelly L. Leonard with respect to property generally known as 14340 Olympic Drive, Farmers Branch, Texas, substantially in the form set forth in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 2. The City Manager has full authority to administer the above approved agreement on behalf of the City including, but not limited to, providing notices of default and termination as the City Manager may, from time to time, deem appropriate and necessary.

SECTION 3. This Resolution shall be effective immediately upon final passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:12/6/16:82081)

Resolution No. 2016-128
Exhibit "A"

STATE OF TEXAS	§	
	§	**RESIDENTIAL DEMOLITION/REBUILD PROGRAM**
	§	**INCENTIVE AGREEMENT**
COUNTY OF DALLAS	§	

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Farmers Branch, Texas (the "City"), and Michael Shane Leonard and Kelly L. Leonard (collectively, "Property Owner"), acting by and through their respective authorized officers and representatives. City and Property Owner are collectively referred to herein as "Parties" and separately as "Party."

WITNESSETH:

WHEREAS, Texas Local Government Code Chapter 380 allows City to provide incentives for the promotion of economic development; and

WHEREAS, the promotion of the redevelopment of existing housing stock within City's incorporated limits promotes economic development and is essential for City's continued economic growth and vitality; and

WHEREAS, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, as well as the expansion of existing business enterprises within City's incorporated limits, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and

WHEREAS, the promotion of the redevelopment of the housing stock within City's incorporated limits is a major contributing factor to City's growth, which in turn stimulates trade and commerce and reduces unemployment; and

WHEREAS, residential development and redevelopment will attract and encourage business relocation and expansion since business will look to the available housing stock to meet the needs of management and the work force; and

WHEREAS, City has determined that providing an economic development incentive in accordance with this Agreement will further City's objectives, will benefit City and City's inhabitants and will promote local economic development and stimulate business and commercial activity within City's incorporated limits; and

WHEREAS, Property Owner is the owner of a one-family detached residential dwelling located at 14340 Olympic Drive, Farmers Branch, Texas (hereinafter defined as the "Residence"); and

WHEREAS, Property Owner intends to demolish the Residence and construct a new one-family detached residential dwelling thereafter (hereinafter defined as the "New Residence"); and

WHEREAS, Property Owner has been approved as an eligible participant and the demolition of the Residence and the construction of the New Residence has been approved as an eligible project (hereinafter defined as an "Approved Project") under City's Demolition/Rebuild Property Tax Incentive Program (hereinafter defined as a "Program");

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article II
Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Annual Incentive(s)" means five (5) annual economic development incentives each in an amount equal to one hundred percent (100%) of the difference between the ad valorem taxes assessed by City against the New Residence for the applicable tax year and paid to City, and the amount of ad valorem taxes assessed by City against the Residence for the Base Year and paid to City, as calculated and determined by City, to be paid to Property Owner as set forth herein.

"Approved Project" means the approval of the demolition of the Residence and the construction of the New Residence as an approved project by City as being eligible for the incentives under the Program.

"Base Year" means January 1st of the calendar year immediately preceding the date of approval of the Project.

"City" means the City of Farmers Branch, Texas.

"Commencement Date" means the date fee simple title to the New Residence and the Land are conveyed by Contractor to the Property.

"Commencement of Construction" means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the Approved Project; and (ii) all necessary permits for the construction of the Approved Project have been issued by all applicable governmental authorities.

"Completion of Construction" means that (i) substantial completion of construction of the New Residence has occurred; and (ii) City has issued a final certificate of occupancy of certificate of inspection for the Approved Project.

"Effective Date" means the date this Agreement bears the signatures of the authorized representatives of all of the Parties.

"Event of Bankruptcy or Insolvency" means insolvency, appointment of receiver for Property Owner and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Property Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Expiration Date" means April 1st of the first full calendar year following the sixth (6th) anniversary of the Commencement Date.

"Impositions" means all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Property Owner or any property or any business owned by Property Owner within City's incorporated limits.

"Land" means the real property located in the City of Farmers Branch, Texas, on which the Residence is located, but excluding any improvements, which property is described as:

> Lot 3, Block A Brookhaven Hills, an Addition to the City of Farmers Branch, Dallas County, Texas, according to the plat thereof recorded in Volume 802, Page 1151, Map Records of Dallas County, Texas.

"New Residence" means a new one family detached dwelling to be constructed on the Land, as approved by City as an Approved Project, excluding the Land, which has a floor area of not less than 4000 square feet of air conditioned space and a Taxable Value (not including the Land) of not less than $600,000.00 as of January 1st of the calendar year following the date of Completion of Construction.

"Payment Request" means (a) with respect to the Annual Incentives paid pursuant to Section 3.1, below, a written request from Property Owner submitted to City on or before April 1st of each calendar year for the payment of the Annual Incentive accompanied by a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for the preceding tax year have been paid in full, and such other information as City may reasonably request; (b) with respect to the first installment of the Demolition Grant, a written request from Property Owner submitted to City requesting payment of the first installment of the Demolition Grant accompanied by sufficient evidence that the Residence has been demolished and removed from the Land and that the Land is ready for construction of the New Residence; and (c) with respect to the second installment of the Demolition Grant, a written request from Property Owner

submitted to City requesting payment of the second installment of the Demolition Grant accompanied by a copy of the certificate of occupancy or certificate of final inspection of the New Residence issued by City's Building Inspections Department.

"Project" means the demolition of the Residence and the construction of the New Residence on the Land.

"Property Owner" means the first person or people to whom Contractor conveys fee simple title of the New Residence after Completion of Construction of the New Residence and who use(s) the New Residence as a residence homestead.

"Residence" means the one family detached dwelling located on the Land as of the Effective Date.

"Residential Demolition/Rebuild Program" means the City of Farmers Branch Residential Demolition/Rebuild Incentive Program adopted by Resolution of the City Council, as amended.

"Taxable Value" shall mean the appraised value of the Residence or the New Residence, as the case may be, as certified by the Dallas Central Appraisal District, or its successor entity, as of January 1 of a given year. The Parties agree that, as of the Effective Date, the Taxable Value of the Residence is $162,930.00

Article III
Economic Development Incentive

3.1 Payment. Subject to Property Owner's continued satisfaction of the terms and conditions of this Agreement and the obligation of Property Owner to repay the Annual Incentives pursuant to Section 5.2 hereof, City agrees to provide the Annual Incentives to Property Owner to be paid not later than the thirtieth (30th) day after City receipt of the applicable Payment Request following April 1st of each calendar year, beginning April 1st of the calendar year immediately following the Commencement Date, provided City has timely received the ad valorem taxes assessed against the Land and the New Residence in full for the respective tax year. Property Owner shall submit a Payment Request to City on or before April 1st of each calendar year for the applicable Annual Incentive. For example, assume for illustration purposes only that a Project was approved by City in 2016 making 2016 the Base Year. Further assume that (i) City taxes assessed and paid for the Residence (improvements excluding the Land) for 2016 was $1,000 and (ii) the Approved Project was completed June 1, 2017, then the Commencement Date would be June 1, 2017. Further assume that City taxes assessed and paid for tax years 2018 is $2,000. Then the first Annual Incentive would be for the difference in City taxes assessed on the New Residence for tax year 2018 in the amount of $2,000 and the amount of City taxes assessed for the Base Year (2016) of $1,000 resulting in an Annual Incentive of $1,000, which would be paid not later than the thirtieth (30) day after City receipt of the applicable Payment Request following April 1, 2019, provided Property Owner submitted a Payment Request on or before April 1, 2019, which included a tax receipt showing

that the ad valorem taxes assessed against the Land and the New Residence for tax year 2018 have been paid in full.

3.2 Current Revenue. The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

3.3 Payment of Demolition Grant. City agrees to pay the Demolition Grant to Property Owner in the amount of Fifteen Thousand and No/100 Dollars ($12,500.00) in two equal installments of $6250.00 each as follows:

(a) With respect to the first installment, not later than thirty (30) days after City's receipt of a Payment Request from Property Owner, but in no case earlier than thirty (30) days prior to completion of demolition of the Residence and removal of all debris from the Land; and

(b) With respect to the second installment, not later than thirty (30) days after City's receipt of a Payment Request from Property Owner, but in no case earlier than the thirtieth (30th) day after Completion of Construction of the New Residence.

City's obligation to pay the Demolition Grant, or any installment thereof, shall terminate if Completion of Construction of the New Residence does not occur on or before the second (2nd) anniversary of the Effective Date.

Article IV
Incentive Conditions

City's obligation to pay the Annual Grants shall be conditioned upon Property Owner's continued compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

4.1 Inspections. Property Owner agrees to submit to periodic inspections of the Approved Project by City during the period beginning with the date of Commencement of Construction and ending on date of Completion of Construction.

4.2 Construction of the Approved Project. Property Owner, shall subject to delays resulting from events of Force Majeure, cause Completion of Construction of the Approved Project to occur on or before twenty-four (24) calendar months after the Effective Date.

Article V
Termination

5.1 This Agreement shall terminate upon the occurrence of any one of the following:

(a) Mutual agreement of the Parties;

(b) The Expiration Date;

(c) If any Impositions owed to City or the State of Texas by Property Owner shall become delinquent (provided, however, Property Owner shall retain the right to timely and properly protest and contest any such Impositions) and City provides Property Owner notice of termination, in which case termination shall be immediate;

(d) In the event Property Owner breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof provided by City;

(e) If Property Owner suffers an Event of Bankruptcy or Insolvency;

(f) If, subject to delays resulting from an event of Force Majeure, Commencement of Construction of the New Residence has not occurred within twelve (12) months after demolition and removal of the Residence from the Land and City provides Property Owner notice of termination, in which case termination shall be immediate;

(g) If any subsequent Federal or State legislation or any final, non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, in which case termination shall be immediate upon the effective date of said law or the date the judgment becomes non-appealable;

(h) If upon Completion of Construction of the New Residence, the New Residence contains less than 4000 square feet of air conditioned space as set forth in the definition of "New Residence" herein and City provides Property Owner notice of termination, in which case termination shall be immediate;

(i) If on January 1 following the date of Completion of Construction of the New Residence, the New Residence has a Taxable Value of less than $600,000.00 as set forth in the definition of "New Residence" herein and City provides Property Owner notice of termination, in which case termination shall be immediate;

(j) The sale or transfer of title to the Land and/or the Residence without obtaining prior written consent from City for assignment of this Agreement to the new owner;

(k) The sale or transfer of title to the Land to a third party after the demolition of the Residence but before Commencement of Construction of the New Residence; or

(l) The termination of use of the New Residence by Property Owner as Property Owner's residential homestead.

5.2 In the event of termination by City pursuant to 5.1(c), (d), (e), (g), (j), or (k), Property Owner shall immediately repay to City an amount equal to the total amount of Incentives paid to Property Owner, if any, prior to termination of this Agreement. If this Agreement is terminated pursuant to (i) Section 5.1(d) for breach of Section 4.2, or (ii) Sections 5.1(f), (h), (i), or (k); Property Owner shall, upon written demand from City, reimburse City the amount of the Demolition Grant, or portion thereof, paid to Contractor as of the date of termination of this Agreement.

Article VI
Miscellaneous

6.1 Assignment. This Agreement may not be assigned without the prior written consent of City. This Agreement shall automatically terminate upon any subsequent sale or transfer of the ownership of the Residence or the New Residence.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties.

6.3 Limitation on Liability. It is understood and agreed between the Parties that Property Owner, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.4 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.5 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.6 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Property Owner, to:

On the Effective Date:

Michael Shane Leonard
Kelly L. Leonard
14340 Olympic Drive
Farmers Branch, Texas 75234

After Completion of Construction:

Michael Shane Leonard
Kelly L. Leonard
14340 Olympic Drive
Farmers Branch, Texas 75234

If intended for City, to:

Attn: City Manager
City of Farmers Branch, Texas
13000 William Dodson Pkwy.
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

6.7 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.8 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.9 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.10 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.11 Recitals. The recitals to this Agreement are incorporated herein.

6.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.14 Employment of Undocumented Workers. During the term of this Agreement the Property Owner agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Property Owner shall repay the amount of the Annual Grants and any other funds received by the Property Owner from the City as of the date of such violation within one hundred twenty (120) days after the date the Property Owner is notified by the City of such violation, plus interest at the rate of four (4%) compounded annually from the date of violation until paid. The Property Owner is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Property Owner or by a person with whom the Company contracts.

6.15 Future Incentives. The Property Owner agrees that the residence at 14340 Olympic Drive, Farmers Branch, Texas, will not be eligible for any other or further residential or other incentive offer now or hereafter by the City.

[Signature Page to Follow]

Resolution No. 2016-128
Exhibit "A"

SIGNED AND AGREED on this _____ day of _____, 2016.

City of Farmers Branch, Texas

By:_____
Charles S. Cox, City Manager

Attest:

By:_____
Amy Piukana, City Secretary

Approved As To Form:

By: Peter G Smith
Peter G. Smith, City Attorney

SIGNED AND AGREED on this _____ day of _____, 2016.

Property Owner

By:_____
Michael Shane Leonard

By:_____
Kelly L. Leonard

(kbl:12/6/16:82081)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-125

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.9

Consider approving Resolution No. 2016-125 authorizing a Commercial Facade Revitalization Grant Agreement for 4885 and 4887 Alpha Road; and take appropriate action.

BACKGROUND:
In 2012, a Commercial Facade Revitalization Program (Program) was developed and funded to encourage property owners to enhance the publicly viewed areas of their buildings. The Program is set up as a single payment reimbursement to property owners per building/business, and in some situations, tenants. Facade grants are available up to a 50/50 matching basis with a minimum project value of $2,000 and a maximum reimbursement of $50,000 per grant, unless otherwise approved by the City Council. Since the Program's inception, nine grants have been approved: 12879 Josey Lane, 12895 Josey Lane, 3212 Beltline Road, and 2914-2920 Valley View Lane, 12895 Josey Lane (Suite 140), 13610 Midway Road, 13740 Midway Road/Suite 700, and 13720 Midway Road/Suite 100; 200.

DISCUSSION:
The applicant, Kennington Properties, owns both 4885 and 4887 Alpha Road, a shopping/retail center which totals 75,384 square feet. The purpose of the grant is to beautify the property and unify all storefronts with a consistent modern design. Highlights include Ipe siding and soffits, steel and wood canopy systems, upscale planter systems with elevated landscape features and incorporating patio spaces. The total cost of project is estimated at $703,845.00. The applicant seeks the full $50,000.00 grant, which is less than 10% of the entire project.

POSSIBLE COUNCIL ACTION:

1. I move to approve Resolution 2016-125
2. I move to approve Resolution 2016-125, with modifications
3. I move to table the issue for further study or take no action

RECOMMENDATION:
City Administration recommends adopting Resolution No. 2016-125 approving Economic Development Incentives for 4885 and 4887 Alpha Road pursuant to the Commercial Façade Grant Program in the amount of $50,000.

ATTACHMENTS:

1. Application
2. Kennington Properties Economic Development Agreement
3. Resolution No. 2016-125
4. Power Point Presentation with Renderings

FARMERS BRANCH COMMERCIAL FAÇADE REVITALIZATION PROGRAM APPLICATION

Please return completed with necessary attachments and signatures to the City of Farmers Branch Economic Development Office, 13000 William Dodson Parkway, no later than 5 pm Thursday, prior to the first Friday of each month. If you have any application questions please contact the Economic Development Director at 972.919.2512. If you have any building or sign permit/historic preservation questions please contact Community Services at 972.919.2549.

Applicant Name: Kennington Properties **Date:** October 27, 2016

Business Name: Kennington Alpha LLC

Mailing Address: P.O Box 192269, Dallas, Texas 75219

Contact Phone: _ - _ _ **Email Address:** www.kenningtonproperties.com

Building Owner *(if different from applicant)*: _

Physical Building Address: 4885 Alpha Road, Farmers Branch, TX 75244

Type of Work: *(check all that apply)*

Paint X **Stonework** X **Awning/Canopy** X

Uncovering/replacing windows X **Roof Repair** _

Masonry Cleaning/ Paint Removal X **Other** _

Details of Planned Improvements:
(attach additional paper if necessary)

The funds would go into the improvement of the shopping/retail center at 4885-4887 Alpha Road. There two buildings for the center with a total of 75,384 square feet total. The purpose of this is to beautify the property and unify all storefront with a consistent modern design aesthetic. Materiality includes ipe siding and soffits, steel and wood canopy systems, upscale planter systems with elevated landscape/hardscape features, and incorporating patio spaces for what we foresee as future restaurant tenants.

List Contractor/Project architect Proposals and Total Amounts (please attach original proposals):

Preston Pierce Construction

TOTAL COST OF PROPOSED BUILDING PROJECT: $ 703,845

AMOUNT OF FUNDS REQUESTED ($50,000 FAÇADE MAX): $ 50,000

Attach with all required color samples of paint, awning/canopy, sign design, etc. as well any photographs of building's exterior façade, roof, and foundation.

Applicant's Signature _ **Date** 11-30-2016

Approved _ **Rejected** _ **By** _ **Date** _

FARMERS BRANCH COMMERCIAL FAÇADE REVITALIZATION PROGRAM APPLICATION
AGREEMENT FORM

Please return completed with necessary attachments and signatures to the City of Farmers Branch Economic Development Office, 13000 William Dodson Parkway, no later than 5 pm Thursday, prior to the first Friday of each month. If you have any application questions please contact the Economic Development Director at 972.919.2512.

I have met with the City of Farmers Branch, and I fully understand the Commercial Revitalization Program Procedures and Details established by the City of Farmers Branch. I intend to use this grant program for the aforementioned renovation projects to forward the efforts of the Branch Crossing revitalization program. I have not received insurance monies for this revitalization project.

I have read the Commercial Revitalization Program Application Procedures including the Program Details.

I understand that if I am awarded funds by the City of Farmers Branch, any deviation from the approved project may result in the partial or total withdrawal of the awarded funds. If the façade is altered for any reason within _____ year(s) from construction, I may be required to reimburse the City of Farmers Branch immediately for the full amount of the funds awarded.

Business/Organization Name: Kennington Properties

Applicant's Signature: _____ ***Date:*** 11.30.2016

Building Owner's Signature: _____ ***Date:*** 11/30/16
(if different from applicant)

City of Farmers Branch Approval: _____ ***Date:*** _____

FARMERS BRANCH COMMERCIAL FAÇADE REVITALIZATION PROGRAM APPLICATION

Please return completed with necessary attachments and signatures to the City of Farmers Branch Economic Development Office, 13000 William Dodson Parkway, no later than 5 pm Thursday, prior to the first Friday of each month. If you have any application questions please contact the Economic Development Director at 972.919.2512. If you have any building or sign permit/historic preservation questions please contact Community Services at 972.919.2549.

Applicant Name: Kennington Properties **Date:** October 27, 2016

Business Name: Kennington Alpha LLC

Mailing Address: P.O Box 192269, Dallas, Texas 75219

Contact Phone: _____ **Email Address:** www.kenningtonproperties.com

Building Owner *(if different from applicant):* _____

Physical Building Address: 4487 Alpha Road, Farmers Branch, TX 75244

Type of Work: *(check all that apply)*

Paint X **Stonework** X **Awning/Canopy** X

Uncovering/replacing windows X **Roof Repair** _____

Masonry Cleaning/ Paint Removal X **Other** _____

Details of Planned Improvements:
(attach additional paper if necessary)

The funds would go into the improvement of the shopping/retail center at 4885-4887 Alpha Road. There two buildings for the center with a total of 75,384 square feet total. The purpose of this is to beautify the property and unify all storefront with a consistent modern design aesthetic. Materiality includes ipe siding and soffits, steel and wood canopy systems, upscale planter systems with elevated landscape/hardscape features, and incorporating patio spaces for what we foresee as future restaurant tenants.

List Contractor/Project architect Proposals and Total Amounts (please attach original proposals):

Preston Pierce Construction

TOTAL COST OF PROPOSED BUILDING PROJECT: $ 703,845

AMOUNT OF FUNDS REQUESTED ($50,000 FAÇADE MAX): $ 50,000

Attach with all required color samples of paint, awning/canopy, sign design, etc. as well any photographs of building's exterior façade, roof, and foundation.

_____ 11-30-2016

Applicant's Signature **Date**

Approved _____ **Rejected** _____ **By** _____ **Date** _____

FARMERS BRANCH COMMERCIAL FAÇADE REVITALIZATION PROGRAM APPLICATION
AGREEMENT FORM

Please return completed with necessary attachments and signatures to the City of Farmers Branch Economic Development Office, 13000 William Dodson Parkway, no later than 5 pm Thursday, prior to the first Friday of each month. If you have any application questions please contact the Economic Development Director at 972.919.2512.

I have met with the City of Farmers Branch, and I fully understand the Commercial Revitalization Program Procedures and Details established by the City of Farmers Branch. I intend to use this grant program for the aforementioned renovation projects to forward the efforts of the Branch Crossing revitalization program. I have not received insurance monies for this revitalization project.

I have read the Commercial Revitalization Program Application Procedures including the Program Details.

I understand that if I am awarded funds by the City of Farmers Branch, any deviation from the approved project may result in the partial or total withdrawal of the awarded funds. If the façade is altered for any reason within _____ year(s) from construction, I may be required to reimburse the City of Farmers Branch immediately for the full amount of the funds awarded.

Business/Organization Name: Kennington Properties

Applicant's Signature: _____ ***Date:*** 11 · 30 · 2016

Building Owner's Signature: _____ ***Date:*** 11/30/16
(if different from applicant)

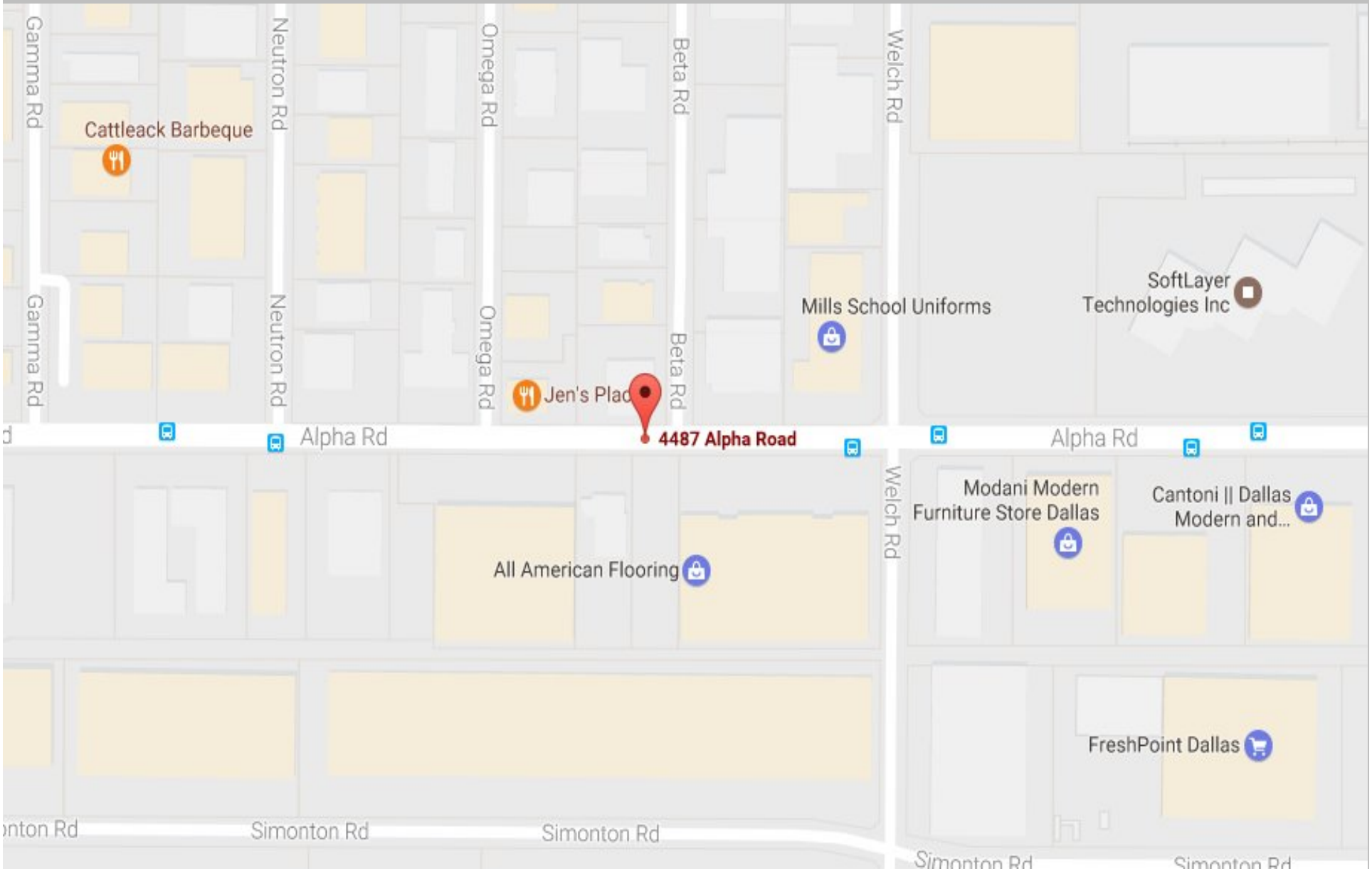
City of Farmers Branch Approval: _____ ***Date:*** _____

FARMERS BRANCH

Commercial Façade Grant Application
Kennington Properties
4487 and 4885 Alpha Road

Allison Cook
Economic Development Director

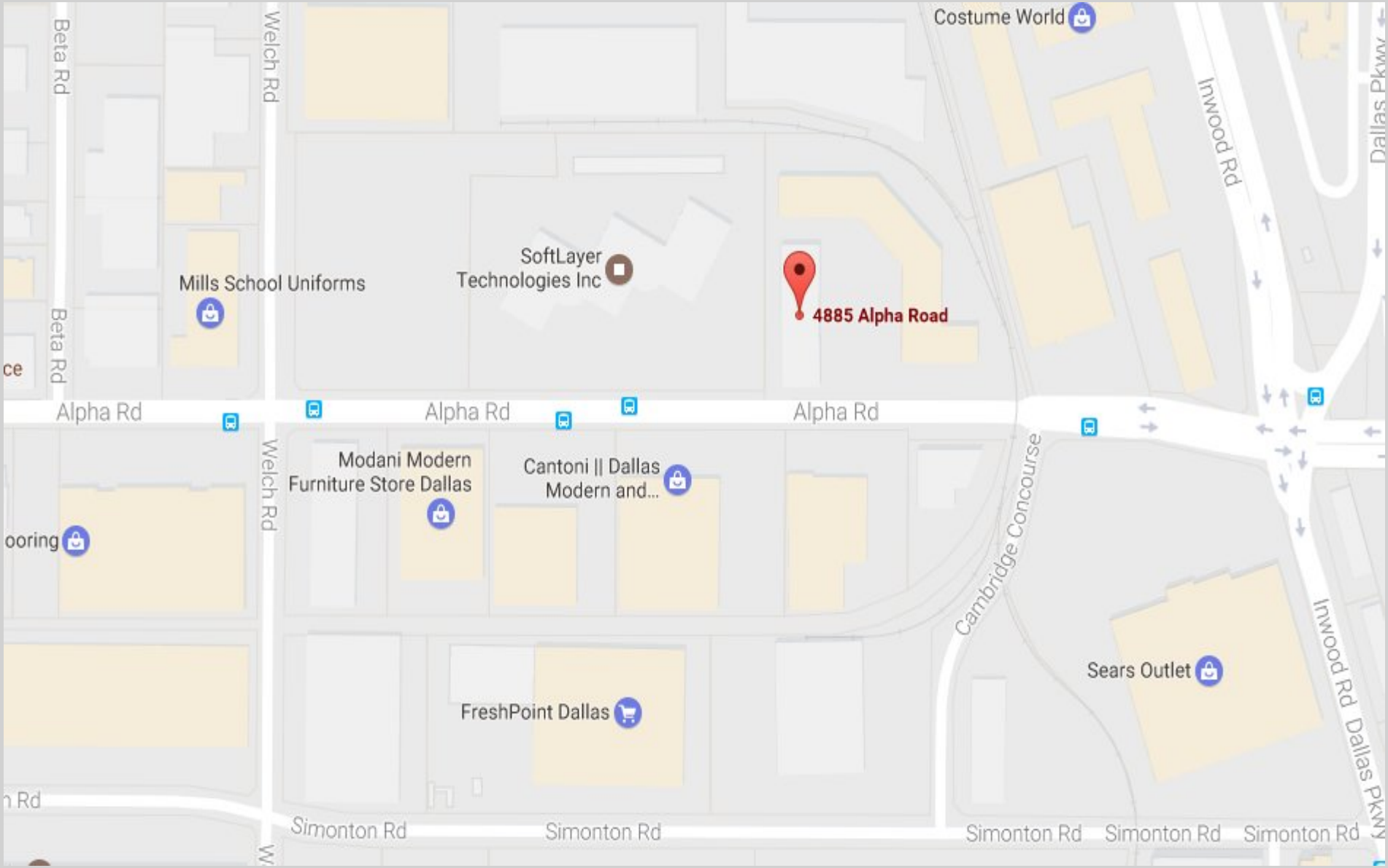
4487 Alpha Road Façade Renovation



4487 Alpha Road Façade Renovation

PAINTED BRICK
NEW CANOPY TO TIE INTO EXISTING STRUCTURE
NEW IPE FACE AND SOFFIT PANELS
GREEN SCREEN PANELS TO TIE INTO CANOPY
NEW ANODIZED ALUMINUM STOREFRONT
NEW SALT FINISHED SIDEWALK TO STOREFRONT
gff

4885 Alpha Road Façade Renovation



4885 Alpha Road Façade Renovation

4487 & 4885 Alpha Road Façade Grant Request

The Façade Improvement Project involves the renovation of properties located at 4487 and 4885 Alpha, both owned by Kennington Properties. The purpose of this project is to beautify the property and present a modern design aesthetic. Use of new stone and metal materials, canopies, windows, and doors as well as exterior paint updates to both the building and parking areas will enhance the overall look and create a modern aesthetic.

Request From Owner

- Estimated Improvements: approximately $703,845 +
- Project scope to include (combined properties):
  - Steel and Wood Canopy Systems
  - Ipe Siding and Soffits
  - Upscale Landscaping
  - Creation of Patio Spaces for Future Restaurant Tenants
  - Preston Pierce Construction - Contractor

Request: $50,000

RESOLUTION NO. 2016-125

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING NEGOTIATION AND EXECUTION OF COMMERCIAL FAÇADE REVITALIZATION GRANT AGREEMENT WITH KENNINGTON ALPHA PLAZA, LLC FOR BUILDINGS LOCATED AT 4885 AND 4887 ALPHA ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch has established a Commercial Façade Revitalization Program pursuant to Chapter 380 of the Texas Local Government Code for the purpose of encouraging commercial property owners within the City to enhance the publicly-viewed areas of their buildings, including exterior walls, landscaping, walkways, equipment screening, uniform signage, and window replacement or upgrades ("the Program"); and

WHEREAS, the Program guidelines authorize reimbursement grants to be made on a per building basis to approved owners who complete construction of qualifying improvements, the amount of such grants to be equal to 50% of the cost of the qualifying improvements up to a maximum of $50,000 per building; and

WHEREAS, the owner of the property generally located at the northwest of the intersection of Alpha Road and Cambridge Concourse Drive has made application for the Program with respect to proposed façade improvements to two buildings located on the owner's property and addressed as 4885 Alpha Road and 4887 Alpha Road, respectively; and

WHEREAS, the City Administration, having reviewed the foregoing application and has determined that the proposed improvements to the buildings on the above property qualifies for the Program; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the negotiation and execution of two grant agreements setting forth the terms and conditions by which the owner of the above-described property will receive the benefits of the Program;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Manager is hereby authorized to negotiate and sign, on behalf of the City of Farmers Branch, a *Commercial Façade Revitalization Program Agreement* with Kennington Alpha Plaza, LLC with respect to each of the buildings addressed as 4885 Alpha Road and 4887 Alpha Road, respectively, in Farmers Branch, Texas, said agreements to be consistent with the policy approved for the administration of the Program and for a maximum of $50,000 per building.

SECTION 2. The City Manager has full authority to administer the above approved agreements on behalf of the City including, but not limited to, providing notices of default and termination as he may from time to time deem reasonable and necessary.

SECTION 3. This resolution shall be effective immediately upon final passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13th DAY OF DECEMBER, 2016.

ATTEST:

_____

Amy Piukana, City Secretary

APPROVED:

_____

Bob Phelps, Mayor

APPROVED AS TO FORM:

_____

Peter G. Smith, City Attorney
(kbl:12/5/16:82026)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-129

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.10

Consider approving Resolution No. 2016-129 authorizing the purchase of a 105-foot ladder truck for the Fire Department through the Houston-Galveston Area Council of Government Cooperative Purchasing Agreement; and take appropriate action.

BACKGROUND:

Included in the FY 2016-17 fixed asset account is $1,050,000 budget to purchase a 105-foot ladder truck.

As the city continues to grow, the fire and rescue challenges facing the Fire Department are changing. The growth of high-density apartment complexes, large custom homes and the soon to begin Mercer Crossing residential development have brought with it the need for the Fire Department to be able to provide ladder access to 4th and 5th floor apartment balconies, along with the ability to deliver fire streams to much larger, taller dwellings that are closely spaced together.

To meet these challenges, the Fire Department is requesting to add a 105' Pierce Dash CF Heavy Duty Ladder Truck to our fleet utilizing the HGAC purchasing cooperative.

The Houston-Galveston Area Council of Governments (HGAC) Purchasing Cooperative received bids for a fire truck manufactured by Pierce Manufacturing Company that satisfies the specifications of the Farmers Branch Fire Department. The Houston-Galveston Area Council of Governments purchasing program complies with State purchasing laws, and the City has an interlocal agreement with them through which to purchase fire apparatus. Since 1993, the Fire Department has satisfactorily purchased seven fire engines and four ambulances utilizing the Houston-Galveston Area Council of Governments contracts.

The total purchase to be paid to Martin Apparatus, Inc. for the ladder truck is $961,159. This amount includes:

- $1,118,117 base bid for the ladder truck.
- $3,647 equipment purchase expense.
- $12,811 chassis pre-pay credit.
- $4,726 aerial pre-pay credit.
- $30,068 full order pre-pay credit.
- $115,000 trade-in credit for the 2005 Pierce Utility Truck (Utility 131).

- $2,000 fee for Houston-Galveston Area Council of Governments.

The Fire Department has purchased multiple fire apparatus using the pre-pay credits. The latest being a 2015 Pierce Dash CF fire engine. The city's cash pre-pay investment is protected by a performance bond that is required and provided by the manufacturer.

The trade-in credit is tied to the removal from the fleet of a 2005 Pierce utility truck. The utility truck is a non-staffed vehicle that averages less than 50 calls a year. Included in the design of the new ladder truck is compartment space need to be able to move the hydraulic heavy rescue tools, cribbing, extra SCBA breathing cylinders and rope rescue equipment that is currently carried on the utility truck.

No new staffing is required with this purchase as the new ladder truck will take the place of a 75' Quint that is located at Fire Station #1.

RECOMMENDATION:

City Administration recommends adopting Resolution No. 2016-129 authorizing the purchase of a 105-foot ladder truck through the Houston-Galveston Area Council of Government Cooperative Purchasing Agreement in the amount of $961,159.

ACTIONS:

1) Motion to approve Resolution No. 2016-129 authorizing the purchase of a 105-foot ladder truck through the Houston-Galveston Area Council of Government Cooperative Purchasing Agreement in the amount of $961,159.
2) Motion to deny Resolution No. 2016-129 authorizing the purchase of a 105-foot ladder truck through the Houston-Galveston Area Council of Government Cooperative Purchasing Agreement in the amount of $961,159.
3) Motion to modify to meet the needs of the Council.
4) Motion to table the issue for further study or take no action.

ATTACHMENTS:

1. Resolution No. 2016-129
2. Siddons-Martin Emergency Group Proposal for Heavy Duty Aerial
3. Siddons-Martin Emergency Group Parts Estimate #14000282
4. HGAC purchase contract

RESOLUTION NO. 2016-129

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING THE PURCHASE OF A LADDER TRUCK FROM SIDDONS-MARTIN EMERGENCY GROUP, LLC THROUGH THE CITY'S COOPERATIVE PURCHASING AGREEMENT WITH HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENT COOPERATIVE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, with the rapid development of large apartment complexes and custom homes the associated fire and rescue risk for the community is changing; and

WHEREAS, the fire department has identified the need for a ladder truck to be able to provide rescue access and/or deliver elevated fire streams to address these large buildings; and

WHEREAS, City Administration has determined that a fire truck meeting City specifications can be purchased from Siddons-Martin Emergency Group, LLC for the total amount of $961,179, through an interlocal cooperative purchasing agreement with the Houston-Galveston Area Council of Governments complying with Chapter 791 of the Texas Government Code, and recommends such purchase; and

WHEREAS, funds to purchase the new fire truck are available from the City's 2016-2017 Fixed Asset Fund; and,

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the purchase of the above-described fire truck.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Manager is hereby authorized to take such steps and enter such agreements as reasonable and necessary to purchase a 2016 fire truck manufactured by Pierce Manufacturing Company from Martin Apparatus through the Houston-Galveston Area Council of Governments Cooperative Purchasing Program, in the amount of $961,169, as well as such change orders to said contract as the City Manager deems reasonable necessary, and in the public interest which are in compliance with applicable law and City policy.

SECTION 2. This resolution shall be effective immediately upon its approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13th DAY OF DECEMBER, 2016.

ATTEST:

_____
Amy Piukana, City Secretary

APPROVED:

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:12/5/16:82012)

3500 Shelby Lane
Denton, Texas 76207
GDN P115891
TXDOT MVD No. A115890
EIN 27-4333590

December 1, 2016

Gabriel Vargas, Asst Chief
Farmers Branch Fire Department
13333 Hutton Drive
Farmers Branch TX 75234

Proposal for Heavy Duty Aerial

Siddons-Martin Emergency Group, LLC is pleased to provide the following proposal to Farmers Branch Fire Department. Unit will comply with all specifications attached and made a part of this proposal. Total price includes delivery FOB Farmers Branch Fire Department and training on operation and use of the apparatus.

Description		Amount
300205, No. 615, 105` Dash CF with 500gpm pump Pierce, Dash CF, Aerial, HD Ladder - 105, DD13 525, 500 gal Price guaranteed for 60 days. Delivery within 12-13 months of order date. A warranty term of 12 months is included.	Vehicle Price	$ 1,118,117.00
	Equipment	$ 3,647.00
Chassis Prepay Discount **($ 12,811.00). $ 427,037.00** due with order.	Prepay Discount	($ 12,811.00)
Aerial Prepay Discount **($ 4,726.00). $ 239,186.00** due with order.	Prepay Discount	($ 4,726.00)
Full Prepay Discount **($ 30,068.00).** Total amount due with order.	Prepay Discount	($ 30,068.00)
	Trade-In	($ 115,000.00)
	SUB TOTAL	**$ 959,159.00**
	H-GAC FS12-15	$ 2,000.00
	TOTAL	**$ 961,159.00**

Additional. Pierce Rescue trade in truck shall be maintained in good working order as normal throughout build process until it is able to be released or until the new aerial is delivered.
Purchase orders received AFTER January 30th 2017 shall incur a 3% price increase through HGAC.

Taxes. Tax is not included in this proposal. In the event that the purchasing organization is not exempt from sales tax or any other applicable taxes and/or the proposed apparatus does not qualify for exempt status, it is the duty of the purchasing organization to pay any and all taxes due. Balance of sale price is due upon acceptance of the apparatus at the factory.

Late Fee. A late fee of .033% of the sale price will be charged per day for overdue payments beginning ten (10) days after the payment is due for the first 30 days. The late fee increases to .044% per day until the payment is received. In the event a prepayment is received after the due date, the discount will be reduced by the same percentages above increasing the cost of the apparatus.

Cancellation. In the event this proposal is accepted and a purchase order is issued then cancelled or terminated by Customer before completion, Siddons-Martin Emergency Group may charge a cancellation fee. The following charge schedule based on costs incurred may be applied:

(A) 10% of the Purchase Price after order is accepted and entered by Manufacturer;
(B) 20% of the Purchase Price after completion of the approval drawings;
(C) 30% of the Purchase Price upon any material requisition.

The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. Siddons-Martin Emergency Group endeavors to mitigate any such costs through the sale of such product to another purchaser; however, the customer shall remain liable for the difference between the purchase price and, if applicable, the sale price obtained by Siddons-Martin Emergency Group upon sale of the product to another purchaser, plus any costs incurred by Siddons-Martin to conduct such sale.

Acceptance. In an effort to ensure the above stated terms and conditions are understood and adhered to, Siddons-Martin Emergency Group, LLC requires an authorized individual from the purchasing organization sign and date this proposal and include it with any purchase order. Upon signing of this proposal, the terms and conditions stated herein will be considered binding and accepted by the Customer. The terms and acceptance of this proposal will be governed by the laws of the state of TX. No additional terms or conditions will be binding upon Siddons-Martin Emergency Group, LLC unless agreed to in writing and signed by a duly authorized officer of Siddons-Martin Emergency Group, LLC.

Sincerely,

Travis Ownby
Siddons-Martin Emergency Group, LLC

I, _____, the authorized representative of Farmers Branch Fire Department, agree to purchase the proposed and agree to the terms of this proposal and the specifications attached hereto.

_____
Signature & Date

Pulse Number	Qty	Description
102	1	ADD "C" Frame Liner
103	1	upgrade to 22,800# front axle
106	1	TAK-4 Suspension
109	1	Change to Dynalastic Suspension
112	1	Vogel Lube
113	1	Aluminum Wheels, front
115	1	Aluminum Wheels Tandem Axle
122	1	ABS upgrade to ESC/ABS/ATC
123	1	Air inlet-outlet
124	1	Additional Air Tanks
128	1	Cummins ISL9 450hp to Detroit DD13 450 hp
130	1	Detroit DD13 450 to 525
138	1	Steering with controls
139	1	Add Extended Bumper
141	1	Bumper tray with cover
146	1	Raised roof, custom cab
148	1	Safety System
149	1	Driver Safety Seat
156	3	Upgrade SCBA Bracket to Hands Free
170	1	Upgrade Enforcer to Velocity
174	1	Upgrade Velocity to Dash CF (PUC)
177	4	Spare radio wiring
178	1	Radio with Weatherband
180	1	Mux Screen
181	2	Install Computer MDT with Power
182	1	Install Customer Radio
185	1	Camera System, Sides and rear to mux
190	1	Intercom Wireless System 2 - Radio, 6 positions with headsets
196	1	Kussmaul Pump plus
200	2	Auto-eject 20 amp
203	1	430 Amp Niehoff alternator
205	1	LED under cab lighting
206	1	LED PUMP BODY
207	1	LED Headlights
208	2	LED Scene Lights
209	2	LED Brow Lights
210	4	LED Surface
211	2	LED Pole
212	1	Tail lighting LED Upgrade
216	1	Step package with wrap bumper
222	1	PUC Body Configuration
227	1	Full depth passenger side
231	2	LED Compartment Lighting premium
244	4	Adjustable Shelf
245	1	Slide-out tool
246	1	Swing-out tool
247	4	Slide-out Floor tray
249	2	Tilt-out Tray
252	4	SCBA Cylinder storage in fender panel triple (each)
267	1	1.5" DISCHARGE front bumper
306	1	Airhorn at activation pump panel
308	2	Tank level group

344	1	Q2B Siren
345	1	GTT Emitter Roof/remote mounted
347	2	Mini Lightbar over crew cab Doors
348	1	Traffic Directing light bar
356	1	Hydraulic 6 KW
379	1	Electric Cord Reel with 200' of 10/3
322	1	LED Emergency Light Package
402	1	Enclosed Stokes Box
403	1	Collision Avoidance
406	1	Wireless Remote for Monitors
408	1	Led Aerial Section Lighting
423	3	5.00" x 100' Rubber Lined Hose
439	8	Hose 1.75" x 50 Double Jacket with 1.50" couplings
441	1	Little Giant Ladder
14233	1	Custom Poly Storage boxes Siddons-MartiN
36802	1	Transfer switch and subfeed box
66622	3	120 volt receptacles
511070	1	Air conditioner prognostics and manual drain tubes
584898	1	Shutoff valves for radiator lines
585486	1	Tinted windows crew
605970	1	FRC LED Tip/tracking
612549	1	Brake fittings compression type
629913	1	Lights, LED Stabilizer pad locators
644764	1	C-Tech drawer
653574	1	Electric Door Locks with conceal and pad
654524	1	Thermal Relief
659095	2	Pegboard with track
664394	1	Electric tank to pump dual control
666813	7	Roller door drip pans
689589	1	Upgrade 110 A/C to Danhard
693311	1	Cab Interior Imperial
695940	1	Compartment Storage, one each under crew floor
788773	1	Compartment 70.5: Aerial Pump
789899	1	Controller, Pressure, Dual Station
797719	1	Trans pump Hale Hydraulic
799588	1	Boom Compartment
1423302	7	Special Pike poles
1423303	2	tft nozzle ME2-VPGI
osk-17	6	Streamlight flashlights

Base Bid
Published Options
Total Published Options
Unpublished Options

Total Options w/o HGAC Fee

Published Options	Unpublished Options
2354	
$1,953.00	
$12,723.00	
$3,692.00	
$5,360.00	
$3,076.00	
$4,483.00	
$4,223.00	
$647.00	
$363.00	
$17,634.00	
$9,410.00	
$1,634.00	
$2,498.00	
$1,636.00	
$1,982.00	
$9,546.00	
$571.00	
$2,162.00	
$39,623.00	
$8,423.00	
$460.00	
$1,191.00	
$2,702.00	
$1,966.00	
$894.00	
$989.00	
$8,673.00	
$2,556.00	
$1,022.00	
$5,225.00	
$1,329.00	
$1,947.00	
$1,850.00	
$2,472.00	
$3,976.00	
$7,292.00	
$3,988.00	
$1,500.00	
$2,192.00	
$11,629.00	
$5,850.00	
$5,946.00	
$768.00	
$1,082.00	
$1,650.00	
$2,932.00	
$1,780.00	
$3,536.00	
$2,130.00	
$161.00	
$2,488.00	

$3,694.00	
$2,120.00	
$4,338.00	
$1,936.00	
	$13,200.00
$2,140.00	
$11,423.00	
$1,854.00	
$6,922.00	
$4,792.00	
$4,099.00	
$1,710.00	
$920.00	
$602.00	
	$3,500.00
	$608.00
	$835.00
	$1,002.00
	$338.00
	$1,081.00
	$2,578.00
	$1,345.00
	$2,890.00
	$2,640.00
	$1,740.00
	$1,024.00
	$1,004.00
	$1,698.00
	$1,246.00
	$6,200.00
	$1,431.00
	$898.00
	$6,920.00
	$3,962.00
	$2,896.00
	$1,002.00
	$1,176.00
	$925.00
	$926.00

$785,980.00	
$272,719.00	
$1,058,699.00	
$63,065.00	5.96%

$1,121,764.00	

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City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-119

Agenda Date: **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.11

Consider approving Resolution No. 2016-119 authorizing the City Manager to negotiate and execute a contract for medical stop-loss insurance coverage; and take appropriate action.

BACKGROUND:
Stop-loss insurance is a product that provides protection against catastrophic or unpredictable losses. It is purchased by employers who have decided to self-fund their employee benefit plans, but do not want to assume 100% of the liability for losses arising from the plans. Under a stop-loss policy, the insurance company becomes liable for losses that exceed certain limits called deductibles.

The City has partnered with Munich Re. this past year as its stop-loss carrier. Current covered benefits are medical and prescription drugs for employees and retirees. The annual aggregate attachment factor is $3.8 million down from 4.4 million with a specific deductable of $125,000.

DISCUSSION:
In October, City Administration will be reviewing proposals for stop-loss insurance coverage for an effective date of January 1, 2017. The cost for this coverage is $340,000. The current cost is $369,000.

RECOMMENDATION:
City Administration recommends authorizing the City Manager to execute a contract for stop-loss insurance coverage.

ACTIONS:
1) Motion to approve Resolution No. 2016-119 authorizing the City Manager to negotiate and execute a contract for stop-loss insurance coverage, as presented.
2) Motion to deny Resolution No. 2016-119 authorizing the City Manager to negotiate and execute a contract for stop-loss insurance coverage.
3) Motion to table the issue for further study or take no action.

ATTACHMENTS:
1. Resolution No. 2016-119
2. Health Analysis

RESOLUTION NO. 2016-119

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND SIGN A CONTRACT FOR MEDICAL STOP-LOSS INSURANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, in order to award the best value and services for Medical Stop-Loss Insurance, City Administration has determined to negotiate for Medical Stop-Loss Insurance relating to the City's employee group health benefit plan for a cost not to exceed $375,000; and

WHEREAS, the City Council of the City of Farmers Branch, Texas, finds it to be in the public interest to concur in the City Administration's proposed actions;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Manager is authorized to negotiate and sign on behalf of the City a contract for Medical Stop-Loss Insurance upon review and receipt of acceptable proposals for such coverage at a cost not to exceed $375,000.

SECTION 2. This resolution shall become effective immediately upon its approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

_____

Amy Piukana, Interim City Secretary

APPROVED:

_____

Bob Phelps, Mayor

APPROVED AS TO FORM:

_____

Peter G. Smith, City Attorney

UNITED HEALTHCARE
January 1, 2016 to December 1, 2016

Enrollment

United BD-F (Plan 116) (HSA $4000/$8000, 80/60)	Full Time Employees	Retirees (under 65)
EE only	37	0
EE + 1	168	0
EE + 2 or more	107	0
Totals	312	0

Totals	312	0
Medical Totals	312	0

Core Benefits**	312
Retiree 65+ Medicare Supp. Stipend	5
HSA employer contribution	
HSA employer admin cost	
Wellness Incentive	250

** Basic Life, Basic AD&D, Core Long Term Disability
*** Annual amounts

Total / month- Proposed 2016 plan year
Total / year- Proposed CY 2016
Total / year- Current CY
Change vs. Current - per Year ($)
Change vs. Current - per Year (%)

Employee & Retiree Annual Deductible Out-of-Pocket Expense CY '15 Est.
Total Estimated Annual Employee & Retiree Contribution Cost

Unit Costs/Rates

TOTAL Monthly Rates	City Contribution ($)	City Contribution (%)	Employee Contribution ($)
$555.56	$500.00	90.000%	$55.56
$1,111.12	$877.78	79.000%	$233.34
$1,666.68	$1,316.68	79.000%	$350.00

TOTAL Monthly Rates	City Contribution ($)	City Contribution (%)	Retiree Contribution ($)
$1,022.98	$575.00	NA	$0.00
$2,045.96	$575.00	NA	$0.00
$3,068.94	$575.00	NA	$0.00

	$15.84
	$225 ***

Employee Only	Employee + 1	Employee +2
$500	$750	$1,000 %
$21.60 ***		

	$700.00 ***
	$70.00
	$0.00
	$225,000.00

65 ACA chargeand 5 Compass

Hold back to build up

RED - denotes variable that can be changed

Total Estimated Monthly Premium

City (1)	Employee	Retiree (2)	TOTAL
$18,500.15	$2,055.57	$0.00	$20,555.72
$147,467.85	$39,200.31	$0.00	$186,668.16
$140,884.46	$37,450.30	$0.00	$178,334.76
$306,852.45	$78,706.19	$0.00	$385,558.64
TOTAL ESTIMATED ANNUAL PREMIUM			
$3,682,229.46	$944,474.22	$0.00	$4,626,703.68

Total budget for City and Active $4,626,703.68

$4,942.08			$59,304.96
$1,125.00			$1,125.00
EO	E1	E2	
$251,500.00	$126,000.00	$8,916.67	$251,500.00
$6,739.20			$6,739.20
$196,840.00			$196,840.00

McGriff Area			
City Cost	Employee Cost	Retiree Cost	TOTAL
$349,811.55	$78,706.19	$0.00	$428,517.74
$3,946,238.62	$944,474.22	$0.00	$4,890,712.84
$2,898,099.00	$683,010.96	$0.00	$3,581,109.96
-$1,048,139.62	-$261,463.26	$0.00	-$1,309,602.88
-36.17%	-38.28%	0.00%	-36.57%
	$740,000.00	$0.00	$740,000.00
	$1,684,474.22	$0.00	$1,684,474.22

66%	includes a hold back
34%	

(3)

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-120

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: I.12

Consider approving Resolution 2016-120 authorizing the City Manager to negotiate and enter into an agreement with Gallagher Construction in an amount not to exceed $250,000.00 to serve the City of Farmers Branch as the Construction Manager for the Justice Center Security Upgrade project; and take appropriate action.

BACKGROUND:

On May 3, 2016, City Council adopted Ordinance No. 3369 authorizing the issuance of City of Farmers Branch, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2016, in an aggregate principal amount of not to exceed $2,600,000 for public safety improvements, equipment and supporting systems for the Farmers Branch Justice Center Security Upgrade Project.

Gallagher Construction has served the City of Farmers Branch as the Construction Manager on several previous projects that include Fire Station #1, Animal Shelter, Fire Station #3, Fire Administration Facility, Senior Center, Recreation Center, and the Aquatic Center. Also, In 1999, when a different Construction Manager went out of business in the middle of construction, Gallagher stepped in and finished Phase II of the Justice Center. The company is currently working with Fire Chief Steve Parker on the future Fire Station to replace station #2.

DISCUSSION:

Gallagher Construction has the personnel and experience to service as the Construction Manager for the Justice Center Security Upgrade project. The company has a history of completing projects on time and within budget. In addition to the previous work for the City of Farmers Branch, they provide this service for many clients in the Dallas Fort Worth region and have good financial stability. Funds are appropriated for this service in the project account.

RECOMMENDATION:

City Administration recommends approving Resolution 2016-120 authorizing the City Manager to negotiate and enter into an agreement with Gallagher Construction in an amount not to exceed $250,000.00 to serve the City of Farmers Branch as the Construction Manager for the Justice Center Security Upgrade project.

POSSIBLE COUNCIL ACTION:

1. I move to approve Resolution 2016-120 authorizing the City Manager to negotiate and enter into an agreement with Gallagher Construction in an amount not to exceed $250,000.00 to serve the City of Farmers Branch as the Construction manager for the Justice Center Security Upgrade project.

2. I move to approve Resolution 2016-120 authorizing the City Manager to negotiate and enter into an agreement with Gallagher Construction in an amount not to exceed $250,000.00 to serve the City of Farmers Branch as the Construction manager for the Justice Center Security Upgrade project, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Resolution No. 2016-120
2. Gallagher Construction Agreement

RESOLUTION NO. 2016-120

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH GALLAGHER CONSTRUCTION COMPANY, L.P. FOR CONSTRUCTION MANAGER SERVICES RELATING TO THE JUSTICE CENTER SECURITY UPGRADE PROJECT; PROVIDING AN EFFECTIVE DATE

WHEREAS, with City Council has made the decision to proceed with design and construction of the Justice Center Security Upgrade Project ("the Project");

WHEREAS, the City has benefited in recent history from the use of a construction manager to oversee the development and construction of major city facilities; and

WHEREAS, based on prior experience and review of qualifications, City Administration has determined that Gallagher Construction Company, L.P. ("Gallagher") is the most qualified to provide professional construction manager services related to the development and construction of the Project, and has proceeded to negotiate a professional services agreement with Gallagher for construction manager services related to the Project; and

WHEREAS, City Administration recommends entering into the proposed professional services agreement with Gallagher for the Project; and

WHEREAS, the City Council of the City of Farmers Branch finds it in the public interest to concur in the above recommendation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City Manager is authorized to negotiate and execute on behalf of the City a professional services agreement with Gallagher Construction Company, L.P. d/b/a Gallagher Construction Services for construction manager services related to the development and construction of the Project in an amount not to exceed $250,000, and to negotiate and execute such amendments to said professional services agreement as the City Manager from time to time determines to be reasonable and necessary subject to the availability of funds, if additional funds are necessary.

SECTION 2. This resolution shall take effect immediately upon its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 13TH DAY OF DECEMBER, 2016.

ATTEST:

APPROVED:

_____
Amy Piukana, City Secretary

_____
Bob Phelps, Mayor

APPROVED AS TO FORM:

_____
Peter G. Smith, City Attorney
(kbl:12/1/16:81953)

AIA® Document C132™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the day of October in the year 2016
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Farmers Branch
13000 William Dodson Pkwy
Farmers Branch, TX 75234
972.247.3131

and the Construction Manager:
(Name, legal status, address and other information)

Gallagher Construction Company, LP d/b/a Gallagher Construction Services
3501 Token Dr., Suite 100
Richardson, TX 75082

for the following Project:
(Name, location and detailed description)

City of Farmers Branch Justice Center Renovations
3723 Valley View Dr.
Farmers Branch, TX 75244

The Architect:
(Name, legal status, address and other information)

TBD

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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12 SPECIAL TERMS AND CONDITIONS

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ARTICLE 1 INITIAL INFORMATION [Intentionally Deleted]

(Paragraphs deleted)

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project. The services covered by this Agreement are subject to the time limitations contained in Article 12.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

2.6.1 Refer to Article 11 of the AIA 232-2009 of the General Conditions of the Contract for Insurance limits.

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(Paragraph deleted)
§ 2.6.2 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services

§ 2.6.3 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella and excess policies.

(Paragraphs deleted)

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project.

§ 3.2.4 Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and

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Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project. The Construction Manager shall assist the Owner in procuring, in accordance with Section 2254.004, Government Code, all of the testing of construction materials, engineering, the inspections services, and the verification testing necessary for acceptance of the facility by the Owner.

The Construction Manager will prepare the "Certificate of Project Compliance" forms provided by the Owner as required by 109 T.A.C. 61.1033 for the separate multiple prime contractors to execute upon Substantial Completion. The Construction Manager will send the multiple forms to the Architect for execution, and subsequently return them to the Owner for execution and file retention.

§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for quasi-governmental authorities for inclusion in the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

(Paragraph deleted)
§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and

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User Notes: (2018206323)

conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall prepare Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

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§ **3.3.10** The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

§ **3.3.11** The Construction Manager shall develop cash flow reports and forecasts for the Project.

§ **3.3.12** The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ **3.3.12.1** The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ **3.3.12.2** Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

.1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.

.2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ **3.3.12.3** The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ **3.3.12.4** The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ **3.3.13** The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors,

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Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject the Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1 Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Architect shall have the responsibility for approval of the shop drawings and submittals. The Construction Manager will send all shop drawings to the Architect by way of an electronic transmission, courier service, UPS, Federal Express, Airborne or one of the next day delivery services. The Owner shall instruction the Architect to return all shop drawings and submittals to the Construction Manager in the same manner. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect.

§ 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

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§ **3.3.20.1** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- **.1** Work completed for the period;
- **.2** Project schedule status;
- **.3** Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- **.4** Request for information, Change Order, and Construction Change Directive status reports;
- **.5** Tests and inspection reports;
- **.6** Status report of nonconforming and rejected Work;
- **.7** Daily logs;
- **.8** Summary of all Multiple Prime Contractors' Applications for Payment;
- **.9** Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- **.10** Cash-flow and forecast reports; and
- **.11** Any other items the Owner may require:

§ **3.3.20.2** In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- **.1** Contractor's work force report;
- **.2** Equipment utilization report;
- **.3** Cost summary, comparing actual costs to updated cost estimates; and
- **.4** Any other items as the Owner may require:

§ **3.3.21** Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ **3.3.22** The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ **3.3.23** With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ **3.3.24** When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ **3.3.25** When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ **3.3.26** The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from

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the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 3.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Architect, Contractor and Multiple Prime Contractors. Consent shall not be unreasonably withheld.

§ 3.3.29 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§3.3.30 The Construction Manager shall assist the Owner in identifying prospective service providers and in procuring such services.

§3.3.31 The Construction Manager shall provide prompt written notice to the Architect and Owner if Construction Manager becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in any Contractor's services. Nothing herein shall cause the Construction Manager to perform professional design services.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2.

Additional services, if required, will be compensated at a monthly fee of Sixty Two Thousand Five Hundred Dollars ($62,500.00).

Services	**Responsibility** *(Construction Manager, Owner or Not Provided)*	**Location of Service Description** *(Section 4.2 below or in an exhibit attached to this document and identified below)*

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

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§ **4.3** Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ **4.3.1** Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner's written authorization:

- **.1** Services necessitated by a change in the previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages;
- **.2** Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- **.3** Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- **.4** Preparation for, and attendance at, a public presentation, meeting or hearing;
- **.5** Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- **.6** Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- **.7** Assistance to the Initial Decision Maker, if other than the Architect; or
- **.8** Service as the Initial Decision Maker.

§ **4.3.2** To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- **.1** Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.
- **.2** To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.
- **.3** Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ **4.3.3** If the services covered by this Agreement have not been completed within timeframe mutually agreed upon by Owner and Construction Manager, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ **5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any.

§ **5.2** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ **5.3** The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

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§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 5.6 Unless provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set

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forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Construction Manager access to the Work wherever it is in preparation or progress.

§ 5.16 If requested by the Construction Manager, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, and contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§6.1.1 Construction cost shall be the total contract sums of all separate contacts for construction that is provided for in the contract and accepted by Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.3 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- **.1** give written approval of an increase in the budget for the Cost of the Work;
- **.2** in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- **.3** implement any other mutually acceptable alternative.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Construction Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 8.3 of this Agreement

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

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§ 8.3 Arbitration

Article deleted by Owner and Construction Manager
(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, with exclusive jurisdiction in Dallas County District Court. The parties agree to submit to the personal and subject matter jurisdiction of Dallas County District Court.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2009, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project.

§ 10.8 If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) as may be required under the Public Information Act, Texas Government Code Chapter 552.

§10.9 The Construction Manager shall require that all Contractors with contracts in excess of $25,000 execute Payment and Performance Bonds, each in the full amount of the Contract, prior to beginning work.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)
N/A

§ 11.1.2 For Construction Phase Services in Section 3.3:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

Compensation shall be a stipulated sum of $247,988.00 (Two Hundred Forty Seven Thousand Nine Hundred Eighty Eight Dollars and No Cents) to be paid as follows:

1) Payment schedule to be determined by both parties at a future date
2) Payments to be paid on the 15th day of each month, in equal installments based upon payment schedule.
3) The last and final payment is to be made after obtaining Certificate of Occupancy by the City with payment to be made not more than twenty (20) days after obtaining Certificate of Occupancy. If more than one payment remains after receiving Certificate of Occupancy, the City shall make all remaining payments in one payment.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

N/A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:

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(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus percent (%), or as otherwise stated below:

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 11.1.

COSTS NOT INCLUDED IN CONSTRUCTION BUDGET:
Geotechnical testing
(Table deleted)
Topographic Survey
Regulatory Permits and Fees
State Plan Review for Handicap Accessibility
Furnishings
Design Fees

All direct and indirect expenses with a 1.05 multiplier.

§ 11.6 Compensation for Reimbursable Expenses
§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the
(Paragraphs deleted)
Project.

(Paragraph deleted)
§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus one hundred five percent (1.05 times) the expenses incurred.

§11.6.3 Non-Reimbursable Costs:

1. Preconstruction Phase Services.
2. All Project Management Staff and On-Site Supervision.
3. Administration staff to manage project's accounting system.
4. Vehicle Expenses
5. Warranty coordination.
6. On-site office provisions
7. Mobilization/Demobilization Costs
8. Telephone Services
9. Mobile Telephone Services
10. Office Supplies
11. On-Site Office Equipment (computers, fax machines, copy machines, etc.)
12. Safety observations
13. Mechanical, electrical, plumbing quality control provisions

§11.6.4 Costs paid directly by Owner (with no fee or mark-up to Construction Manager)

1. All electrical, gas, sewer, and water utility costs consumed by the project requirements.

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2. Fees paid for securing approval of authorities having jurisdiction over the project (impact fees, building permit, inspection fees, etc.).
3. Waste removal costs (dumpsters).
4. Plan and addenda printing expenses.
5. Plan and addenda distribution expenses.
6. Material testing and special testing services.
7. Special consulting services, if required.
8. Storm Water Pollution Prevention Plan Permits, preparation costs, and monitoring (EPA/SWPPP), if required.
9. TAS Inspections and Reviews
10. Public Notices
11. Security Provisions (if required)
12. Owner shall secure items 1 and 2 above from the appropriate public utility or public entity in the normal manner.

§11.6.5 Reimbursable Costs (paid by Owner) with a 5% mark-up from the Construction Manager according to paragraph 11.6.2, Reimbursable Expenses. Based on the project budget of $2,610,400, these Reimbursable Costs are approximately a Not To Exceed Amount of $33,000.00.

1. Temporary Construction Fencing
2. Temporary Toilets
3. Builders Risk Insurance
4. Project Clean-up provisions
5. Storage Trailers
6. Clean-up Equipment
7. Mailing/Shipping provisions
8. Building Protections provisions
9. Other items necessary for the project not outlined in Item 11.6.3, 11.6.4 or 11.6.5 of this Contract.

§11.6.6 The Construction Manager's fee is based on a project budget of $2,610,400.00. The fee will not increase except pursuant to Articles 4, 11.4, 11.6 and Article 12 herein.

§ 11.7 Payments to the Construction Manager

§ 11.7.1 An initial payment of N/A ($) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025

§ 11.7.3 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.7.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§11.7.5 When compensation is based on a percentage of Construction Cost and any portions of the project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with 11.1, based on (1) the lowest bona fide bids or negotiated proposals, or (2) if no such bids or proposals are received, the latest approved estimate of such portions.

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ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§12.1 If the Basic Services covered by this Agreement had not been completed within (timeframe to be mutually agreed upon by Owner and Construction Manager) TBD (TBD) months from the date hereof, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as provided in 11.2.

§12.2 If and to the extent that the time initially established in Section 12.1 above is exceeded or extended, or it the Scope of the Work is increased significantly, through no fault of the Construction Manager, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in section 11.2.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 13.2 This Agreement is comprised of the following documents listed below:

- **.1** AIA Document C132™–2009, Standard Form Agreement Between Owner and Construction Manager as Adviser
- **.2** AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

ARTICLE 14 LIMITS ON INSURANCE

(Paragraphs deleted)
The insurance required by Article 2 shall be written for not less than the following limits, or greater if required by law:

§14.1 Refer to paragraph 11 of AIA 232 General Conditions of this Contract for insurance limits. Any additional insurance required by City of Farmers Branch shall be paid by City of Farmers Branch.

This Agreement is entered into as of the day and year first written above.

	Lisa Gallagher Ellrich
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Charles S. Cox, City Manager City of Farmers Branch	Lisa Gallagher Ellrich, Vice President Gallagher Construction Services
(Printed name and title)	*(Printed name and title)*

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/28/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MHBT Inc.
8144 Walnut Hill Lane, 16th Fl
Dallas TX 75231

CONTACT NAME: Laurie Carter
PHONE (A/C, No, Ext): 972-770-7138 FAX (A/C, No): 972-404-5580
E-MAIL ADDRESS: Laurie_Carter@mhbt.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Amerisure Mutual Insurance Company	23396
INSURER B : St. Paul Fire & Marine Insurance Co	24767
INSURER C : Amerisure Insurance Company	19488
INSURER D : Travelers Lloyds Insurance Company	41262
INSURER E : Indian Harbor Insurance Company	36940
INSURER F :	

INSURED
GALLACON
Gallagher Construction Company, L.P.
3501 Token Drive, Suite 100
Richardson TX 75082

COVERAGES

CERTIFICATE NUMBER: 2047991807 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			CPP203810209	6/30/2016	6/30/2017	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$300,000
							MED EXP (Any one person)	$10,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
C	AUTOMOBILE LIABILITY			CA20381010	6/30/2016	6/30/2017	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB X OCCUR			ZUP10T6102816NF	6/30/2016	6/30/2017	EACH OCCURRENCE	$5,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$5,000,000
	DED X RETENTION $ 10,000							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC2038104	6/30/2016	6/30/2017	X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: Y	N / A					E.L. EACH ACCIDENT	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000
D	Builders Risk (See Below)			QT6603215R384	6/30/2016	6/30/2017	See Below	
E	Prof/Poll (See Below)			PEC001307513	6/30/2016	6/30/2017	See Below	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insured form #CG7085 edition 09/13 applies to the General Liability policy.
Waiver of subrogation form #CG7063 edition 07/12 applies to the General Liability policy.
Primary & Non-Contributory General Liability form #CG7085 edition 09/13.

Additional Insured form #CA7165 edition 10/07 applies to the Automobile Liability policy.
Waiver of subrogation form #CA7118 edition 11/09 applies to the Automobile Liability policy.
See Attached...

CERTIFICATE HOLDER

City of Farmers Branch
13000 William Dodson Pkwy
Farmers Branch TX 75234

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John D Gulkerson

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AGENCY CUSTOMER ID: GALLACON

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
MHBT Inc.	Gallagher Construction Company, L.P. 3501 Token Drive, Suite 100 Richardson TX 75082
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Waiver of subrogation form #WC420304B edition 01/00 applies to the Workers Compensation policy.

Notice of Cancellation form #IL7066 edition 07/14 applies to the General Liability policy.
Notice of Cancellation form #IL7066 edition 07/14 applies to the Automobile Liability policy.
Notice of Cancellation form #IL7045 edition 05/07 applies to the Workers Compensation policy.

The General Liability policy includes a blanket additional insured endorsement to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The General Liability policy contains an endorsement with "Primary and NonContributory" wording that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The General Liability policy contains a blanket waiver of subrogation endorsement that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The Automobile Liability policy contains language that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The Automobile liability policy includes waiver of subrogation wording that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The Worker's Compensation policy includes a waiver of subrogation endorsement that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The General Liability, Automobile Liability & Worker's Compensation policies include a blanket notice of cancellation to the certificate holder endorsement, providing for 60 days' advance written notice if the policy is canceled by the company, or 10 days' written notice before the policy is canceled for nonpayment of premium. Notice is sent to certificate holders with mailing addresses on file with the agent or the company. The endorsement does not provide for notice of cancellation to the certificate holder if the named insured requests cancellation.

******* BUILDERS RISK - COVERAGE D CONTINUED FROM ABOVE ******

Per Project: $25,000,000
Wood Frame/ Brick Veneer/ Joisted Masonry: $2,500,000 Per Project
Flood: $10,000,000 (Deductible: $25,000)
Quake: $1,000,000 (Deductible: $25,000)
Soft Costs: $100,000
Deductible: $5,000
Temporary Storage Limit of Insurance: $250,000
Transit Limit of Insurance: $250,000
Flood Coverage applies to Flood Zones C and X(un-shaded) only.

Loss Payee form #CMT221 edition 04/13applies to the Builders Risk policy.
Blanket Named Insured form #CMT221 edition 04/13 applies to the Builders Risk policy.

The Builders Risk policy includes blanket named insured and loss payee wording that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

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AGENCY CUSTOMER ID: GALLACON

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY		NAMED INSURED
MHBT Inc.		Gallagher Construction Company, L.P. 3501 Token Drive, Suite 100 Richardson TX 75082
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

**** PROFESSIONAL & POLLUTION LIABILITY - COVERAGE E CONTINUED FROM ABOVE ****

$5,000,000 - Professional Liability
$5,000,000 - Pollution Liability
Includes Mold

Additional Insured form #PCPocCP edition 05/09 applies to the Pollution coverage.
Waiver of Subrogation form #PCPocCP edition 05/09 applies to the Professional & Pollution coverage.

The Pollution Liability policy includes blanket additional insured and blanket waiver of subrogation status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The Professional Liability policy includes blanket waiver of subrogation status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

Re: City of Farmers Branch Justice Center

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AIA® Document A232™ – 2009

General Conditions of the Contract for Construction, *Construction Manager as Adviser Edition*

for the following PROJECT:
(Name, and location or address)

City of Farmers Branch Justice Center
3723 Valley View Ln.
Farmers Branch, TX 75244

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

Gallagher Construction Company, LP d/b/a
Gallagher Construction Services
3501 Token, Dr., Suite 100, Richardson, TX 75082
Off: 972.633.0564
Fax: 972.633.0164

THE OWNER:
(Name, legal status and address)

City of Farmers Branch
13000 William Dodson Pkwy
Farmers Branch, TX 75234
972.247.3131

THE ARCHITECT:
(Name, legal status and address)

TBD

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This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents consist of the Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), Performance Bond, Labor and Material Payment Bond, the Drawings, the Specifications, all Addenda issued prior to execution of the Agreement and all Modifications thereto, and any other documents listed in the Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding requirements).

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

§ 1.1.3 The Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Multiple Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 1.1.5 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker. The Initial Decision Maker is the Architect and shall render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

1.1.9 DESCRIPTION OF THE PARTIES

The following definitions apply to parties named in the Contract Documents:

1. Owner — City of Farmers Branch
13000 William Dodson Pkwy
Farmers Branch, TX 75234

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2. Construction Manager — Gallagher Construction Services
3501 Token Dr., Suite 100
Richardson, TX 75082

3. Architect — TBD

4. Contractor

§ 1.1.10 ADDENDA

Addenda are written or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding documents, including Drawings and Specifications, by additions, deletions, clarifications or corrections. Addenda will become part of the Contract Documents when the Construction Agreement is executed.

§ 1.1.11 APPROVED, APPROVED EQUAL, APPROVED EQUIVALENT, OR EQUAL

The terms Approved and Approved Equal relate to the substitution of materials, equipment or procedure in writing by the Architect prior to receipt of bids.

§ 1.1.12 ABBREVIATIONS

N.I.C. Not in contract. Indicates work not to be done by this Contractor.
By Others
By Owner
Existing

AIA	American Institute of Architects
ACI	American Concrete Institute
AIEE	American Institute of Steel Construction
AISC	American Iron and Steel Institute
ASA	American Standards Association
ASTM	American Society of Testing Materials
AWSC	American Welding Society Code
FS	Federal Specification
NES	National Electrical Code
SPR	Simplified Practice Recommendation
UL	Underwriters Laboratories, Inc.
AISI	American Iron and Steel Institute

§ 1.1.13 BIDDING DOCUMENTS

The terms "Bid" or "Bidding" shall include Competitive Sealed Proposals, when appropriate. Bidding Documents consist of all documents bound into or referenced in the Project Manual, the Drawings, and Addenda related thereto. The Project Manual contains the Bidding Requirements, Sample Forms, Conditions of the Contract, the Specifications, and a list of Drawings, and Schedules, some of which are bound into the Project Manual (Other Drawings and Schedules are bound separately).

§ 1.1.14 MISCELLANEOUS OTHER WORDS

Provide: Whenever the word "provide" is used in these documents, it shall mean the same as "furnish and install".

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Should drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by the Architect or Construction Manager in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small-scale drawings. Specifications determine nature and setting, workmanship, and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

§ 1.2.5 Precedence of the Contract Documents: The most recently issued Document takes precedence over previously issued forms of the same Document. The order of precedence is as follows with the highest authority listed first:

.1 The Agreement
.2 The Addenda
.3 Conditions of the Contract, Drawings, and Specifications shall have equal authority. Should these documents disagree among themselves, the Architect and Construction Manager will select the appropriate method for performing the work at no additional increase in the Contract Cost.

§ 1.2.6 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect prior to proceeding with the Work. If discrepancies appear, Contractor shall request interpretation from the Architect through the Construction Manager prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

§ 1.2.7 Optional Materials, Brands and Processes: When more than one is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified only products of those named manufacturers are acceptable. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment but shall be provided by the manufacturer as required for the proper functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable; however, indicated and specified performance and material requirements are minimum, and will be required in addition to standard accessories. The Architect reserves the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect, or Architect's consultants' reserved rights.

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§ 1.5.2 The Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 Transmission of Data in Digital Form

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 MISCELLANEOUS DEFINITIONS

§ 1.7.1 ADDENDA, ADDENDUM

Documents issued by the Architect prior to execution of the Owner Contractor Agreement that modify or clarify the Bidding Documents. The addenda become a part of the Contract Documents.

§ 1.7.2 ALTERNATE BID(S)

A separate amount stated on the Bid Form that, if accepted by the Owner, will be added to or deducted from the Base Bid. If accepted, the work that corresponds to the alternate bid will become part of the Agreement between Owner and Contractor. Alternative bids shall remain valid for a period of 60 days after receipt of bids, regardless of whether an Owner Contractor Agreement has been executed, unless indicated otherwise herein.

§ 1.7.3 BASE BID

The Contractor's bid for the Work, not including any Alternatives.

§ 1.7.4 CONTRACT TIME

The period of time established in the Contract Documents for Substantial Completion of the Work. This period of time is not subject to adjustment for weather days. Refer to Section 01800 Scope of Work for specific time for completion of work, providing all contract documents, submittals and other required information.

§ 1.7.5 DATE OF AGREEMENT

The date the Owner formally awards a Contract for Construction of the Work. This date will be inserted on the first page of the Agreement Between Owner and Contractor and shall be referenced in Performance Bond and Payment Bond forms. See also Date of Commencement of the Work.

§ 1.7.6 DATE OF COMMENCEMENT OF THE WORK

The date of the fully executed Agreement Between Owner and Contractor, or, if agreed to by the Owner in writing, the date a written Notice to Proceed is delivered to the Contractor.

§ 1.7.7 DATE OF FINAL COMPLETION

The end of construction. See paragraph 9.10.

§ 1.7.8 DATE OF SUBSTANTIAL COMPLETION

See paragraph 8.1.3.

§ 1.7.9 DAY

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See paragraph 8.1.4.

§ 1.7.10 NOTICE TO PROCEED

A notice that may be given by the Owner through the Construction Manager to the Contractor that directs the Contractor to start the Work. It may also establish the Date of Commencement of the Work.

§ 1.7.11 PUNCH LIST

A comprehensive list prepared by the Contractor prior to Substantial Completion to establish all items to be completed or corrected; this list may be supplemented by the Architect, Construction Manager or Owner. See paragraph 9.8.2

§ 1.7.12 UNIT PRICES

A cost for a unit of work as described in the Contract Documents. If accepted, the Owner may add or deduct Unit Price work at the amounts stated on the Bid Form and such amounts shall not be subject to additional mark up by the Contractor or his subcontractors. Unit prices accepted by the Owner shall be valid through the completion of the Contract. The Owner may elect to reject unit prices prior to executing the Contract. If the unit prices are accepted, they will be incorporated into the Contract. The Owner may elect to reject the unit prices bid without precluding the right to request Changes in the work as described in Article 7 of the General and Supplementary Conditions.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. City Council, by majority vote, is the only representative of the Owner, , having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum, or agree to an extension to the contractual completion date. The City Council designates the City Manager as an authorized representative to act on its behalf during the course of construction. In the event that emergency changes in the scope of the work are required before the City Council's next regular meeting or in order to facilitate and expedite the timely completion of the work, the City Manager may approve construction changes that do not exceed $25,000 in increased costs. Any such change shall be confirmed in writing between the Construction Manager and the City Manager and notice of such approved changes shall be given to the City Council at its next regular meeting. The City Council will act as soon as reasonably possible to avoid undue delays in the construction completion date.

§ 2.1.2 It is distinctly understood that by virtue of this Contract, no mechanic, contractor, material men, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit.

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§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 The Contractor will be furnished free of charge, 2 copies of the Drawings and Specifications for the execution of the work, unless the Owner and Construction Manager agree that additional copies are appropriate for the proper completion of the Contractor's Work. In that event, Contractor shall be provided with the additional number of copies as determined by Owner and Construction Manager. Contractor can purchase additional sets for the cost of reproduction, postage and handling.

§ 2.2.6 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 OWNER'S RIGHT TO OCCUPY THE PROJECT

§ **2.5.1** The Owner shall have the right to occupy or use, without prejudice to the right of either party, any completed or largely completed portions of the project, notwithstanding the time for completing the entire work or such portions may not have expired. Such occupancy and use shall not constitute acceptance of any work not in accordance with the Contract Documents.

§ **2.5.2** If such prior use delays completion of the project, the Contractor shall be entitled to extension of time, which claim shall be in writing with supporting data attached.

§ **2.5.3** Refer to Article 11 - Insurance and Bonds regarding property insurance requirements in the event of such occupancy.

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ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his warranty, he shall promptly notify the Architect through the Construction Manager in writing, providing substantiation for his position. Any necessary changes, including substitution of materials, shall be accomplished by change order.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

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§ 3.2.5 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instruction concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures. Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303, and Texas Health and Safety Code, Subchapter C, Section 756.021, et. seq.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol free, drug free, and weapon free policies and zones, which will require compliance with those policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall also require adequate and appropriate dress of Contractor's employees, Subcontractors, and all other persons carrying out the Contract.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall be responsible for the correct laying out of the Work according to the Contract Documents and written modifications of the Architect and Construction Manager including all necessary leveling and checking. The Contractor shall check the established grades and bench marks, and shall lay out all partition lines and other significant reference lines or points which will enable Contractor to accurately place Contractor's boxes, openings, sleeves, conduits, pipe duct, controls, hangers, inserts and other devices. Subcontractors shall be responsible for laying out Subcontractor's Work from these reference points. Datum reference and control lines for the project will be established by a professional civil engineer engaged by the Owner and coordinated by the Construction Manager. From this reference each Contractor shall be responsible for the Contractor's own layout and dimensions. Any problems occurring between the separate Contractors shall be directed to the Construction Manager. If required, the Architect shall be consulted by the Construction Manager for a decision. Disputes shall be resolved as they occur by the Construction Manager and Architect as applicable.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor, as a requirement of the Contract Documents, may be required to provide installation of materials, systems and equipment furnished F.O.B. by other Contractors on the Project. The Contractor shall accept delivery, unload, store, protect, provide security, distribute and install such materials, systems and equipment and shall document receipt on forms acceptable to the Construction Manager.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the

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Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

3.5.1 The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 Except where otherwise stipulated in the Contract Documents, the Contractor shall, as per its Contract, warranty all materials and workmanship furnished under this Contract for a period of one (1) year after the date of Substantial Completion and shall repair and make good, without expense to the Owner, any and all defects in his work which may develop within that time.

§ 3.5.3 All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms at the time of Substantial Completion.

§ 3.5.4 Approximately 11 months after Substantial Completion on each phase or building, the Contractor shall, if requested by the Owner to do so, accompany the Owner, the Construction Manager and the Architect on a complete re-inspection of the Project. The Contractor shall be responsible for correcting of any additional deficiencies observed or reported.

§ 3.5.5 Contractor shall certify, on form(s) provided by the Owner through the Construction Manager, that the project has been constructed in general accordance with the Contract Documents.

§ 3.6 Taxes

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 The Owner is exempt from the Texas Sales Tax on any purchase of tangible personal property and will issue Certificates of Exemption from the Texas Sales Tax on materials furnished by Contractors on Texas City Construction projects. Failure of the Contractor to obtain Certificates of Resale from their suppliers shall make the Contractor responsible for absorbing the tax.

§ 3.6.3 The Owner shall provide a tax exemption certificate to the Construction Manager and Contractor.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner shall obtain all permits and approvals, and pay all fees and expenses, including engineering costs, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare

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proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- **.1** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.8.4 The Contractor shall be authorized to expend allowance funds only as directed by the Construction Manager and Owner.

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§ 3.9 Superintendent

§ 3.9.1 The Superintendent shall be available on job site during working hours throughout the progress of the Contractor's Work until completion. The Superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Construction Manager and the Architect, unless the Superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner, Construction Manager, or Architect objects to any nominated superintendent.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect through the Construction Manager, the name and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review. Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces. The comprehensive progress schedule for the Project will be a Critical Path Method (CPM) network. The Contractor's Construction Schedule shall indicate the dates for the starting and completion of the various stages, including the placing of material orders, delivery of materials and equipment, submission of shop drawings, product data and samples, processing of shop drawings, product data and samples, and all Work activities, and, shall provide estimates of labor hours, crew sizes, and proposed number of crews to accomplish the Work. The Contractor's Construction Schedule shall be used as the Construction Manager determines in preparation of the Construction Manager's Construction Schedule for the entire project. The sequencing and duration of Contractor activities indicated on the Construction Manager's Construction Schedule may be adjusted by the Construction Manager after a joint review and by mutual agreement.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall coordinate the letting of subcontracts, material purchases, shop drawing, product data and sample submissions, delivery of materials and sequence of operations, to conform to the requirements of the Construction Manager's Construction Schedule and shall furnish proof of same as may be required by the Construction Manager. The Contractor shall bring any possible means of shortening the schedule, at no additional costs, to the attention of the Construction Manager.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule. The Contractor shall attend coordination and progress meetings scheduled and conducted by the Construction Manager to discuss progress, scheduling, coordination requirements, and problems. When required, the Contractor shall

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furnish information in regard to the Contractor's proposed effort to overcome any incurred delay. This information shall be in a form acceptable to the Construction Manager.

§ 3.10.5 The Contractor shall provide the Owner with such schedules as may be required.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Construction Manager and Architect, or in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Ownerand Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved by the Architect. The Contractor shall be responsible for insuring that only 'approved' shop drawings, product data and samples, bearing the stamp of the Architect, are allowed on the Project.

§ 3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data and Samples or similar submittals unless the Contractor has specifically informed the Architect through the Construction Manager in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data and Samples or similar submittals by the Architect's approval thereof.

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§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. A registered architect must prepare plans and specifications for all the work governed by Texas Occupational Code, Chapters 1051 and 1001, and a registered engineer must prepare plans, specifications, and estimates for all work. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas designated by the Construction Manager, permitted by law, ordinances, permits and by the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment. The Contractor shall not use any of the Owner's existing facilities, such as, toilets, cafeteria, parking areas, power hookup, etc., except with the Construction Manager's written approval. The Contractor shall not, at any time, block or restrict access to the site..

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site and shall comply with the Construction Manager's Site Utilization Plan.

§3.13.3 The roads, sidings and other transportation facilities at the site, where work under the Contract is being performed, are for the general use and convenience of the Owner. If Contractors are permitted to use them, Contractor must conform to the regulations of the local authorities. If the work of a Contractor requires that such facilities be temporarily discontinued, after obtaining Construction Manager's approval, the work must be performed expeditiously. Contractor shall provide and maintain proper warnings and detour signs at all pedestrian and vehicular closures, intersections, and along detours, directing traffic around closed portions of roadways. Contractor shall, at Contractor's own expense, wherever necessary or required, provide and maintain fences, temporary roadways, temporary cross signs, watchmen, warning lights and take such other precautions as may be necessary to protect life and property. Contractor shall be responsible for all damages occasioned in any way by Contractor's act or neglect. All barricades and obstructions shall be illuminated at night, and all lights shall be kept on from one half hour before sunset until one-half hour after sunrise.

§3.13.4 On-site storage space for Contractor's field office trailer, sheds, materials, tools, equipment, and supplies must be coordinated with and approved by the Construction Manager in advance. Contractor's materials, equipment, tools and supplies shall be moved at no cost if their location obstructs or impedes the work of others.

§3.13.5 The Owner will provide site survey, selected baselines and benchmarks. The Contractor shall not disturb existing monuments and markers at the site. Should monuments, markers, or both be disturbed by the Contractor, Contractor shall bear the cost of a licensed surveyor engaged by the Construction Manager for the purpose of relocating such monuments or markers. Contractor shall lay out Contractor's work and shall be responsible for the

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accuracy of all lines, elevations and measurements, grading, utilities, and other work executed under the Contract. Contractor must exercise proper precaution to verify figures shown on Drawings before laying out work. Contractor will be held responsible for any error resulting from Contractor's failure to exercise such precaution.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, coring, fitting or patching required to complete the Work or to make its parts fit together properly. Contractor shall provide protection of existing Work as required.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Multiple Prime Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner's own forces or by other Multiple Prime Contractors except with written consent of the Construction Manager, Owner and such other Multiple Prime Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Multiple Prime Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 The Contractor shall not disturb any existing structure, piping, apparatus or other work unless expressly required by the Contract. Where cutting, drilling or removals are required in existing walls, floors or roof construction, the Work shall be done in a manner that will safeguard and not endanger the structure, and shall in all cases be as approved by the Construction Manager and Architect. Prior to any cutting, drilling or removals, the Contractor shall investigate both sides of the surface involved, shall determine the exact location of adjacent structural members by visual examination, and shall avoid interference with such members. The Contractor shall not cut, weld to or otherwise alter any structural member without the written consent of the Architect obtained through the Construction Manager.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager and Architect , or their designated agents access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Architect, or Construction Manager. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1

(A) TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS PROVIDED BY (B) BELOW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE CITY INDEMNITEES) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO, ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF A PERSON OR PROEPRTY DAMAGE, INCLUDING THE LOSS OF USE

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OF PROPERTY, ARISING OR ALLGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE CONTRACTOR AND CONTRACTOR'S AND ITS SUB-CONTRACTORS PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF THE CONTRACTOR UNDER THIS AGREEMENT, OR DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT BY CONTRACTOR, ITS SUB-CONTRACTORS, OR ANY OF THEIR AGENTS AND EMPLOYEES, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSSION OF THE CONTRACTOR, IT'S SUB-CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, ITS SUB-CONTRACTORS OR ANYONE FOR WHOSE ACTS THE CONTRACTOR OR SUB-CONTRACTOR MAY BE LIABLE.

(1) INDEMNIFICATION FOR EMPLOYEE INJURY CLAIMS. WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESETATIVE OF CONTRACTOR OR IT'S SUB-CONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF ANY CITY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF THE CONTRACTOR AND THE CITY THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN CONCURRENTNEGLIGENCE, BUT NOT THE SOLE NEGLIGENCE, OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF IT'S SUB-CONTRACTORS. WITH REGARD TO CLAIMS AGAINST ANY PARTY SEEKING INDEMNITY UNDER THIS AGREEMENT WHICH ARE MADE BY AN EMPLOYEE OF THE CONTRACTOR, IT'S SUB-CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, IT'S SUB-CONTRACTOR OR ANYONE FOR WHOSE ACTS THE CONTRACTOR OR SUB-CONTRACTOR MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT SHALL NOT BE LIMITED BY ANY LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR, IT'S SUBCONTRACTOR OR ANY OTHER EMPLOYER UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER SIMILAR EMPLOYEE BENEFIT ACTS. CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

(2) INDEMNIFICATION FOR COPYRIGHT INFRINGEMENT CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED ABOVE, THE CONTRACTOR HEREBY INDEMNIFIES, AND HOLDS HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE AND ATTORNEYS' FEES ARISING OUT OF OR RELATING TO ANY CLAIM AGAINST THE CITY INDEMNITEES ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INSTRUMENTS OF SERVICE FURNISHED BY OR THROUGH THE CONTRACTOR, IT'S SUBCONTRACTORS OR IT'S CONSULTANTS, EXCEPT TO THE EXTENT THE INFRINGEMENT IS CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CITY INDEMNITEES.

(B) IT IS AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR THE ADDITIONAL INSURED REQUIREMENTS UNDER THE INSURANCE REQUIRED BY THIS AGREEMENT, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE CONTRACTUAL OBLIGATIONS AND SHALL OPERATE TO AMEND THE OBLIGATIONS TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS

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OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE OBLIGATIONS SHALL CONTINUE IN FULL FORCE AND EFFECT. SHOULD ANY PROVISION OR ANY PART OF ANY PROVISION OF THIS AGREEMENT BE HELD INVALID, UNENFORCEABLE OR CONTRARY TO PUBLIC POLICY, LAW, STATUTE OR ORDINANCE, THEN THE REMAINDER OF THE PROVISION, PARAGRAPH, THIS SECTION AND/ OR THIS AGREEMENT SHALL NOT BE AFFECTED THEREBY AND SHALL REMAIN VALID AND FULLY ENFORCEABLE.

(C) THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT SHALL SURVIVE THE COMPLETION OR ABANDONMENT OF THE WORK OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT AND THE TERMINATION OF THE AGREEMENT FOR A PERIOD OF TWO (2) YEARS.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The obligations of the Contractor under paragraph 3.18.1 shall not extend to the liability of the Construction Manager, the Construction Manager's Consultants, Architect, the Architect's consultants, a registered engineer, and agents and employees of any of them for damage that is caused by or results from (1) defects in plans, designs, or specifications prepared, approved, or used by the Architect or engineer or negligence of the Architect or engineer in the rendition or conduct of professional duties called for, or arising out of the Construction Documents; and (2) arises from personal injury or death, properly injury, or any other expense that arises from personal injury, death, or property injury.

§ 3.19 PREVAILING WAGE RATES

§ 3.19.1 No employee used in this construction may be paid less than the minimum wage rate provided in Texas Government Code, Chapter 2258.

§ 3.20 ANTITRUST VIOLATIONS

§3.20.1 To permit the Owner to recover damages suffered; in antitrust violations, the Owner/Contractor Agreement shall include the following; "Contractor hereby assigns to Owner any and all claims for overcharges associated with this contract which are under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. (1973)." The Contractor shall include this provision in his agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Architect shall endeavor to guard the Owner against defects and deficiencies in the Work.

§ 4.1.2 The Owner shall retain a construction manager lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Construction Manager shall endeavor to guard the Owner against defects and deficiencies in the Work.

§ 4.1.3 Duties, responsibilities and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Architect and Contractor. Consent shall not be unreasonably withheld.

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§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, the Owner shall employ a successor construction manager or architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work, however, the Construction Manager shall not be a guarantor of the Contractor's performance.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Architect shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Construction Managerof defects and deficiencies in the Work. Whenever the Architect and/or Construction Manager considers it necessary or advisable, the Architect and/or Construction

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Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Architect and/or Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 The Construction Manager will receive from the Contractor and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples, and transmit to the Architect. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect. Upon receipt of reviewed submittals from the Architect, the Construction Manager will return the submittals to the Contractor.

§ 4.2.10 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.12 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7. and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 The Construction Manager will maintain at the site for the Owner one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These will be available to the Architect and the Contractor.

§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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§ 4.2.16 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.17 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Construction Manager, Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within the time limit agreed upon herein:

The Architect shall provide a response within five days from receipt of a written request from the Construction Manager, Owner or Contractor.

§ 4.2.18 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.19 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent of the Contract Documents.

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect. The Architect will review and respond in writing to the Construction Manager to requests from Contractors. The Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 All subcontractors and suppliers shall be obtained in accordance with Texas Government Code, Chapter 2269.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made a timely objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

§ 5.2.4 The Contractor is required to visit the site and completely familiarize himself with the existing conditions prior to the bid. No additional increase in the Contract amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Contract Documents.

§ 5.3 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the

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rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

§ 5.5 Contractor shall promptly notify Owner, Construction Manager and Architect of any material defaults by any Subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor or other material man or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

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§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Construction Manager and other Multiple Prime Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Multiple Prime Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities or defective construction. If the Contractor notifies the Construction Manager, in writing, that another Contractor is failing to coordinate his work with the Work of the Contractor as directed, the Construction Manager will promptly investigate. If Construction Manager finds Contractor's claim to be true, Construction Manager will promptly issue such directions to the other Contractor as the situation may require. The Construction Manager shall not, however, be liable for any damages suffered by Contractor by reason of the other Contractor's failure to promptly comply with the directions issued by the Construction Manager or by reason of another Contractor's default in performance; it being understood that the Construction Manager does not guarantee the responsibility or continued efficiency of any Contractor. Costs caused by delays or improperly timed activities or defective construction shall be borne by the party responsible therefore.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. The Contractor shall cooperate with the Owner, Architect and Construction Manager and other Contractors working on this project in order to avoid interference, inconvenience or damage. To aid in avoiding conflicts, the Contractor, without additional charge, shall make all reasonable modifications in the work as may be directed by the Construction Manager and Architect. In the event the Contractor's operations cause any damage, interference, or inconvenience to work being carried out under any other Contract, the Contractor shall restore, replace, rectify, or otherwise make good any damage to the satisfaction of the Construction Manager, Architect and to the other Contractors. Should the responsible Contractor fail to comply, the corrective work will be performed by others at the expense of the responsible Contractor.

If the Contractor installs any work prior to proper coordination, or in such manner as to cause interference with the work of others, Contractor shall arrange for removal of, or arrange for necessary modifications to, the work. Any such action is subject to the approval of the Construction Manager and Architect and shall be at no additional cost.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, other Multiple Prime Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 Change Orders

7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:

- **.1** The change in the Work;
- **.2** The amount of the adjustment, if any, in the Contract Sum; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The Contractor shall be allowed the following percentages for Project general conditions, overhead and profit for each change authorization to be considered by the Construction Manager and Architect for changes to be incorporated into the Work. Applicable mark-ups shall be in addition to the cost of direct labor expense, cost of materials, services and equipment as may be required for the Work.

.1	For Work Performed by the Contractor's Work Forces:	
	Payroll Burden-(Direct Labor Cost) MAXIMUM ALLOWED (FICA, Medicare, FUTA, TEC, Worker's Compensation Insurance and General Liability Insurance)	46%
	General Conditions: (Supervision, project management, engineering, estimating, detailing, layout, shop drawings, miscellaneous tool and material expense, field office expense, warranty, and cleanup)	5%
	Contractor's Overhead:	10%
	Profit or Fee:	5%
.2	For Work Performed by Contractor's Subcontractors:	
	Overhead and Profit:	5%

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.7.

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§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. The term "reasonable expenditures" shall not include any of the items set forth below:

1. Salaries or other compensation of the Contractor's and Subcontractor's personnel at the Contractor's and Subcontractor's principal office and branch offices.

2. Expenses of the Contractor's and Subcontractor's principal and branch offices other than the field office on the project.

3. Any part of the Contractor's and Subcontractor's capital expenses, including interest on the Contractor's and Subcontractor's capital employed for the work.

4. Overhead and general expenses of any kind, except as described in this paragraph (7.3.7).

5. Costs due to the negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable including but not limited to the correction of defective or nonconforming work, disposal of materials and equipment wrongly supplied, or making good any damage to property.

6. The cost of any item not specifically and expressly included in the items described in this paragraph (7.3.7).,

In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- **.1** Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- **.2** Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- **.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- **.5** Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation, or by other causes that the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.1.1 Time extensions for labor disputes shall be limited to the reasonable time required to establish separate entrances to the project in the event of labor disputes. In the event the Construction Manager, Architect, or Owner provide the Contractor with a separate entrance to the site, a time extension for labor disputes shall be limited to a

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maximum of one day following the establishment of separate entrances. It is the duty and responsibility of the Contractor to ensure that his or her employees enter through separate gates if same are established.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 The Contractor shall have no claim for compensation or damages for delays or hindrances to the Work occasioned by any act or omission of the Owner or their agents, or separate contractors, other provisions of the contract notwithstanding, and further agrees that the Contractor shall be fully compensated for all delays solely by an extension of time.

§ 8.3.5 The following is a requirement of the Contract and will be incorporated in the Agreement Between Owner and Contractor as if fully set forth therein:

The work to be performed under this Contract shall be commenced and substantially completed as set out in the Agreement Between Owner and Contractor, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions. The parties hereto agree that time is of the essence of this contract and that the pecuniary damages which would be suffered by the Owner, if the Contractor does not complete all work called for in the contract documents by the specified date, are in their very nature difficult of ascertainment.

It is therefore expressly agreed as a part of the consideration inducing the Owner to execute this contract that the Owner may deduct from the final payment made to the Contractor a sum equal to a certain amount per day, as stipulated hereinafter depending on the amount of the Contract, for each additional calendar day beyond the agreed date which the Contractor shall require for Substantial Completion of the work included in this contract. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the work is not completed within the agreed time, or within the legally extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damage being caused by additional compensation to personnel, for loss of interest on money and other miscellaneous increased costs, all of which are difficult of exact ascertainment.

If your contract is:		**The amount of liquidated damages is:**
Over $25,000	=	$500 per calendar day
Between $5,000 - $24,999	=	$100 per calendar day
Between $1,000 - $4,999	=	$ 50 per calendar day
Less than $1,000	=	No liquidated damages

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

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§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Payments will be made on account of materials or equipment 1) incorporated in the Work and 2) suitably stored at the site or 3) suitably stored at some offsite location provided the following conditions are met for offsite storage:

.1 The location must be agreed to, in writing, by the Owner and Surety.
.2 The location must be a bonded warehouse.
.3 Surety must agree, in writing, to each request for payment.
.4 The Contractor, at Owner's option, must bear the cost of the Owner's and Architect's expenses related to visiting the off site storage area.

Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Contractors shall submit six copies of the application using AIA Document G702 and G703 Application and Certificate for Payment, 2009 Edition. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form.

§ 9.3.5 MONTHLY PAYMENT PROCEDURES: The following payment procedures shall be adhered to for all monthly payments:

A. Field review of Application: Submission to Construction Manager

(1) An on-site review of the application shall occur on or about the 20th day of the month. A representative of the Architect, Owner, Construction Manager and Contractor shall attend the review meeting.

(2) Ideally, the review shall be of a rough draft of the Application. Corrections and/or changes resulting from the field review shall be incorporated into the formal typed Application.

(3) The Contractor shall deliver the corrected Application to the Construction Manager's office no later than the twenty-fifth (25th) of the month.

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B. Architectural Processing:

(1) In addition to normal processing, the Architect shall verify that the corrections and/or changes resulting from the field review have been incorporated into the formal typed Application.

C. Processing:

(1) Owner forwards Contractor's check to the Construction Manager for distribution on or about the seventeenth (17th) day of the following month.

(2) The Owner, through the Construction Manager, may withhold release of the Contractor's check if the Contractor has been notified in writing by the Construction Manager that it owes money to

(i.) another Contractor for damages to the other Contractor's work;
(ii.) the Construction Manager for reimbursement of temporary cleanup labor charges; or
(iii.) other items for which the Contractor is responsible for reimbursement but has not responded to request for payment.

D. Project Application Amounts:

(1) All Contractors shall prepare an estimated Schedule of Payments at the beginning of each project.

(2) Along with the regular Applications for Payment, a projected amount for the following month shall be submitted.

§ 9.3.6 RETAINAGE: On all contract sums until substantial completion of the Contractor's work, the Owner will pay 95% of the amount due the Contractor on account of progress payments.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.3 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the

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Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3.1 The Architect will affix his signature to the same form described in Paragraph 9.3.4 to signify his certification of payment, provided the application is otherwise satisfactory.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager or Architect.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a separate contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents

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.8 failure of the Contractor to submit a written plan indicating the necessary action to regain lost time on the construction schedule for the completion of the Work within the Contract Time.

.9 persistent refusal to adequately pursue the Work with the necessary supervision, labor, materials, equipment or services required to execute the Work in accordance with the Project schedule and to avoid delays in the Work to be performed by other Contractors and the Owner's forces;

.10 Contractor's refusal, neglect or failure to provide certificates of or other evidence of compliance with all the requirements of Article 11 to the Owner and the Construction Manager;

.11 Contractor or Contractor's subcontractors' acts or inaction's resulting in the filing of a lien against the Project;

.12 Contractor or Contractor's subcontractors' refusal to follow the Project Safety Program issued as a Contract Document;

.13 failure to maintain record drawings as specified; or

.14 failure to properly submit a response to a RCQ (Request for Change Quotation) within thirty (30) days of receipt thereof.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager and both will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the work has not attained Substantial Completion within the contract time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Construction Manager a comprehensive typewritten list of items to be completed or corrected. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the requirements of the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments,

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retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, for contracts with a value less than contracts twenty-five thousand dollars ($25,000.00), (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents if the Owner instructs the Construction Manager in writing prior to obtaining Substantial Completion to obtain this statement from Contractor, (4) consent of surety, for contracts with a value of twenty-five thousand dollars ($25,000.00) and above and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Prior to final payment, the Contractor shall submit in duplicate to the Architect the following completed forms:

.1 Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706 on Contracts less than $25,000.
.2 Contractor's Affidavit of Release of Liens, AIA Document G706A on Contracts less than $25,000.
.3 Consent of Surety to Final Payment on Contracts $25,000 and above.
.4 Subcontractor's Guarantee notarized
.5 Subcontractor's Lien Releases notarized
.6 Each Contractor shall submit a notarized affidavit stating that no asbestos building materials were used.

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.7 Maintenance and instruction manuals. Three sets of each bound in a 3" ring binder.
.8 Record drawings if required by Contractor's Scope of Work.
.9 Final list of subcontractors (AIA Document G805).

Documents identified as affidavit must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment.

§ 9.10.4
(Paragraphs deleted)
Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee.

(Paragraph deleted)

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
.4 construction or operations by the Owner or other Contractors.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor or those under its control. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to, asbestos or polychlorinated biphenyl (PCB),encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Construction Manager and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resumed upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

(Paragraph deleted)
§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to

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perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

(Paragraph deleted)

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 ASBESTOS OR ASBESTOS CONTAINING MATERIALS

§ 10.5.1 Certification of Asbestos Free Project:

§.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed and notarized an officer of the construction company.

§.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

§.3 Final Payment shall not be made until this letter of certification has been received.
Add the following Paragraph 10.5 and subparagraph 10.5.1 :

§ 10.6 LEAD FREE MATERIALS IN POTABLE WATER SYSTEM

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor involved with the potable water system shall furnish a notarized statement certifying that the potable water system is "lead free".

ARTICLE 11 INSURANCE AND BONDS

§ 11.0 GENERAL

§ 11.0.1 The Owner will be furnished a copy of your insurance policies, including all endorsements, prior to the commencement of any Work.

§ 11.0.2 The insurance shall contain a provision that at least thirty (30) days prior written notice shall be given to the Owner in the event of cancellation, material change, or non-renewal.

§ 11.0.3 Insurance shall be underwritten by a company rated not less than "A" and "VII" in Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on AM Best's website, www.ambest.com.

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

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.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
.4 Claims for damages insured by usual personal injury liability coverage;
.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
.7 Claims for bodily injury or property damage arising out of completed operations; and
.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 On every date of renewal of the required insurance policies, the Contractor shall cause a Certificate of Insurance and any policy endorsements to be issued evidencing the required insurance herein and delivered to the Owner. In addition the Contractor shall within ten (10) business days after written request provide the Owner with Certificates of Insurance and any policy endorsements for the insurance required herein (which request may include copies of such policies). The delivery of the Certificates of Insurance and the policy endorsements (including copies of such insurance policies) to the Owner is a condition precedent to the payment of any amounts due to Contractor by the Owner. The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a default and/or breach of this Agreement. All policies and endorsement shall remain in effect for not less than two (2) years after abandonment of the work or services or the substantial completion of the work and services provided pursuant to this Agreement.

§ 11.1.4 In addition to any other obligations required herein, the Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Construction Manager, the Construction Manager's consultants, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 In each contract for construction, the following language shall be included:

"A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project is required for the duration of the project.

Duration of the project includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011 (44) for all employees of the contractor providing services on the project for the duration of the project.

The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

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If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

No later than seven days after receipt by the contractor, a new certificate of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knows of any change that materially affects the provision of coverage of any person providing services on the project.

The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011 (44) for all of its employees providing services on the project for the duration of the project.

Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;

Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

Obtain from each other person with whom it contracts, and provide to the contractor:

a) A certificate of coverage, prior to the other person beginning work on the project; and

b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

Notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have know, of any change that materially affects the provision of coverage of any person providing services on the project; and

Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996."

§ 11.1.6 CONTRACTOR'S LIABILITY INSURANCE

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Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1) Premises operations
2) Independent Contractor's Protective
3) Products and Completed Operations
4) Contractual-Including Specified Provisions for the Contractor's Obligations under Paragraph 3.18
5) Owned, Non-Owned and Hired Vehicles
6) Broad Form Coverage for Property Damage
7) Personal Injury including liability assumed by contract

The Contractor's insurance as required to meet the above potential liabilities shall not be written for less than the following specified limits or that which is required by law, which is ever greater:

	TYPE OF COVERAGE	Min. Limits of Liability
1.	Workers' Compensation Employer's Liability	Statutory $500,000.00 Each Accident $500,000.00 Disease Policy Limit $500,000.00 Disease Each Employee
2.	Comprehensive General Liability	*Comprehensive, Contractual, Independent Contractors, Personal Injury* $1,000,000.00 Personal & Adv. Injury $1,000,000.00 Each Occurrence $2,000,000.00 General Aggregate Per Project $ 5,000.00 Med. Expenses (any one person) $ 50,000.00 Fire Damage $1,000,000.00 Each Occurrence $1,000,000.00 Aggregate
3.	Automobile Liability	$1,000,000.00 Combined Single Limit
	The Automobile Liability needs to include coverage for loading and unloading hazards.	
4.	Umbrella Excess Liability	$1,000,000.00 Each Occurrence $1,000,000.00 Aggregate
	This coverage shall be combined single limits bodily injury, including death, and property damage liability insurance as an excess of the primary coverage required and to follow form of the primary coverage required.	
5.	Independent Contractor's Liability -	Same limit as #2 above.
	6. Products and Completed Operations - $2,000,000.00 completed operations aggregate commencing with issuance of final certificate of payment, and remaining in effect for (1) year.	
	7. Property Damage Liability Insurance will provide X, C and U coverage as applicable.	
	8. Contractual Liability - Same limits as #2 above.	
	9. Builders Risk Insurance: Construction Manager will provide Builders Risk Insurance for the duration of each project. Owner will reimburse Construction Manager for the premiums for the Builders Risk Insurance. In addition, Owner will be responsible for the deductible on a Builders' Risk claim ($5,000 per claim all other perils / $25,000 per claim Flood & Earthquake).	

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POLICY ENDORSEMENTS

Each insurance policy required under sub paragraph 11.1.6 shall include the following conditions by endorsement to the policy:

Each policy shall require that thirty (30) days prior to the expiration, cancellation, non-renewal, endorsement reducing or restricting coverage or any other material change in coverage, a written notice thereof shall be given to OWNER by Certified Mail to: OWNER, c\o Gallagher Construction Company, 3501 Token Dr., Suite 100, Richardson, TX 75082.

The Contractor shall also notify OWNER within 24 hours after receipt of any notices of expiration, cancellation, non-renewal or material change in coverage it receives from its insurer by Certified Mail to the aforementioned Assistant Superintendent of Administration at the same address.

The term Owner/City shall include all Authorities, City Councils, Bureaus, Commissions, Divisions, Departments, and offices of OWNER and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of OWNER.

The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by OWNER, to any future coverage, or to OWNER's Self-Insured Retention's of whatever nature. The Contractors policy is considered Primary and Non-Contributory with respects to the additional insureds - OWNER, ARCHITECT AND CONSTRUCTION MANAGER.

OWNER, ARCHITECT and CONSTRUCTION MANAGER shall be named additional insured on the Commercial General Liability and Umbrella and Business Auto Policies. With respect to the Commercial General Liability policy, ISO form CG 20 1011 85 or its equivalent or broader will be attached to the policy and continue in force 1 year commencing after the issuance of the final payment certificate.

WAIVER OF SUBROGATION

The Contractor's Workers' Compensation, Commercial General Liability, Umbrella and Business Auto policies shall include a Waiver of Subrogation rights for the loss or damage against OWNER, ARCHITECT, AND CONSTRUCTION MANAGER shall be to extent same is covered by insurance.

FORM OF CERTIFICATE

The form of Certificate shall be Accord Form 25S. Furnish to the Construction Manager and Owner copies of any endorsements that are subsequently issued amending coverage or limits.

Contractor shall not commence work at site under this Contract until he has obtained all required insurance and submitted appropriate policies and/or certifications.

Certificate Holder: OWNER
c/o Gallagher Construction Services
3501 Token Dr., Suite 100
Richardson, TX 75082

§ 11.2 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

The Insurance required by Article 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are used in the performance of the work, but not incorporated in the permanent improvements.

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The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.3.1 There will be a $5000.00 deductible for each loss to be paid on a prorated basis between each Contractor having an interest in the loss, such prorated share to be determined by the Construction Manager.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable

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conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees each of the other, and (2) the Construction Manager, Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction of the arbitrators.

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Contractor shall furnish a separate performance and a payment bond, each in the full amount of the Contract, said bonds covering faithful performance of the Contract and payment of obligations arising there under. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Section 3503.005, Texas Insurance Code

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Contractor shall deliver the required Bonds to the Owner through the Construction Manager not later than the 5th day after the date that the Contract is presented to the Contractor. All Bonds will be reviewed by the Construction Manager for compliance with the Contract Documents prior to the execution of the Contract. In the event that Construction Manager has any questions concerning the sufficiency of the bonds, Construction Manager shall refer the bonds to Owner or Owner's representative for decision.

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§ 11.4.4 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

§ 11.4.5 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of the bond shall be not earlier than the date of execution of the Contract. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect for failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

Exclusive venue for any action shall be in the state district court of Dallas County, Texas. The parties agree to submit to the person and subject matter jurisdiction of said court.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Construction Manager, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. This may apply to materials proposed for use, materials already delivered to the Project, or materials already incorporated into the Work. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of

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(1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses shall be at the Contractor's expense. Any materials which fail to meet the requirements established by the Contract Documents shall not be used whether or not previously approved by the Architect. If such materials have been delivered to the Project, they shall be removed. If the materials have already been incorporated into the Work, the Construction Manager or the Architect may order the materials removed, or, at the discretion of the Owner, through the Construction Manager and Architect, the materials may be permitted to remain in place providing the Contractor agrees to a proper deduction from the Contract Sum.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect. The Contractor shall maintain a file of all test reports. At the completion of the Project, the Contractor shall submit these reports to the Owner in an Appendix to the Operations and Maintenance Manual.

§ 13.5.5 If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing. Neither the observations of the Architect or the Construction Manager in their Administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor, shall relieve the Contractor from Contractor's obligation to perform the Work in accordance with the Contract Documents.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 Time Limits on Claims

The Owner and the Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and the Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 The Owner shall have the right to examine, copy and/or audit the books and other records in possession of the Contractor relating to this Contract, at any time deemed necessary by the Owner. This right of the Owner is limited to books and other records relating to work performed by the Contractor on a cost plus fee basis.

§ 13.9 EQUAL OPPORTUNITY

§ 13.9.1 The Contractor shall maintain policies of employment as follows:

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§ 13.9.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies.

§ 13.9.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

§ 13.10 CERTIFICATION OF PROPER HAZARDOUS WASTE DISPOSAL

§ 13.10.1 Contractor shall submit to the Owner certification that all hazardous waste, trash, debris, etc. has been disposed of in a manner which is in strict compliance with all current requirements of the Environmental Protection Agency (EPA), State, County, City and Local districts and authorities.

§ 13.11 TEXAS ACCESSIBILITY STANDARDS

Contractor shall submit to the Owner certification that all work installed by Contractor is in strict compliance with all requirements and regulations of the Texas Accessibility Standards and that Contractor, at the Contractor's sole expense, shall be responsible for correcting all non-compliant work at any time, during construction or after substantial completion, when notified by Owner that Contractor's work is not in compliance.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- **.3** Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract

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Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- **.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of this Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

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.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination. Such payment shall not exceed the initial Contract Sum in any event.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 Notice of Claims. Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract.

§ 15.1.4 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3.

§ 15.1.5 Claims for Additional Time

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 Claims for Consequential Damages. The Contractor waives Claims for consequential damages arising out of or relating to this Contract. This waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to Contractor's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to prosecution of any Claim, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and

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User Notes:

all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant; (2) submit a schedule to the parties indicating when the Architect expects to take action; (3) reject the Claim in whole or in part, stating reasons for rejection; (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect shall notify the surety, if any, of the nature and amount of the Claim.
§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision.
§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect and Construction Manager, if the Architect or Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation.

(Paragraphs deleted)
§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

(Paragraphs deleted)
§ 15.2.9 Any claims, disputes, or matters arising out of this contract between the Contractor and the Owner or the Architect not settled by mediation, shall be submitted to a court of appropriate jurisdiction. It is understood and agreed that, in the event that any dispute, controversy, or conflict arises during the design and construction of the Project or following its completion, the parties hereto will cooperate in good faith, if possible, to resolve the issues without resorting to litigation. Should the parties be unable to reach agreement, an independent mediator may be selected by mutual consent of the parties to assist in a further effort to resolve the dispute. Furthermore, if the parties mutually agree to mediation, each party included in the mediation will bear an equal share of all costs related to the mediation.

Any claims, disputes or matters arising out of the contract will be submitted to mediation only upon the mutual consent of the parties. In the event that mutual consent is not achieved, the parties are free to pursue any claims, disputes or matters in any manner allowed by law.

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User Notes:

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2016-130182

Date Filed:
10/28/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Gallagher Construction Company, LP
Richardson, TX, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Farmers Branch

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

16-62A
Construction Management Services

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Gallagher Ellrich, Lisa	RICHARDSON, TX United States	X	
Gallagher, Von	RICHARDSON, TX United States	X	

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

AMANDA WATSON
Notary Public, State of Texas
My Commission Expires
07/20/2017

Lisa Gallagher Ellrich
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Lisa Gallagher Ellrich, this the 28 day of October, 20 16, to certify which, witness my hand and seal of office.

Amanda Watson	Amanda Watson	Notary
Signature of officer administering oath	Printed name of officer administering oath	Title of officer administering oath

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16-320

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Regular Agenda

In Control: City Council **File Type:** Report

Agenda Number: I.13

Presentation by former Mayor William Glancy regarding wall screening at Marsh Lane and Wooded Creek.

BACKGROUND:
Former Mayor William Glancy has filled out an agenda request to appear before the City Council regarding his request for the City to assist in wall replacement at Marsh Lane and Wooded Creek.

Mayor Phelps has approved this item to be placed on the agenda for discussion.

Request for Future City Council Agenda Item

Date 12/5/12

If you have a specific topic that you would like the City Council to discuss at a future meeting, please list your name, address, telephone number, and the specific topic. The item will be reviewed and possibly scheduled for a future meeting, or forwarded to City staff for appropriate action.

First Name William

Last Name GIANCY

Address 3808 WOODED CREEK DR

E-Mail Address [redacted]

Phone [redacted]

Extension

Alternate Phone

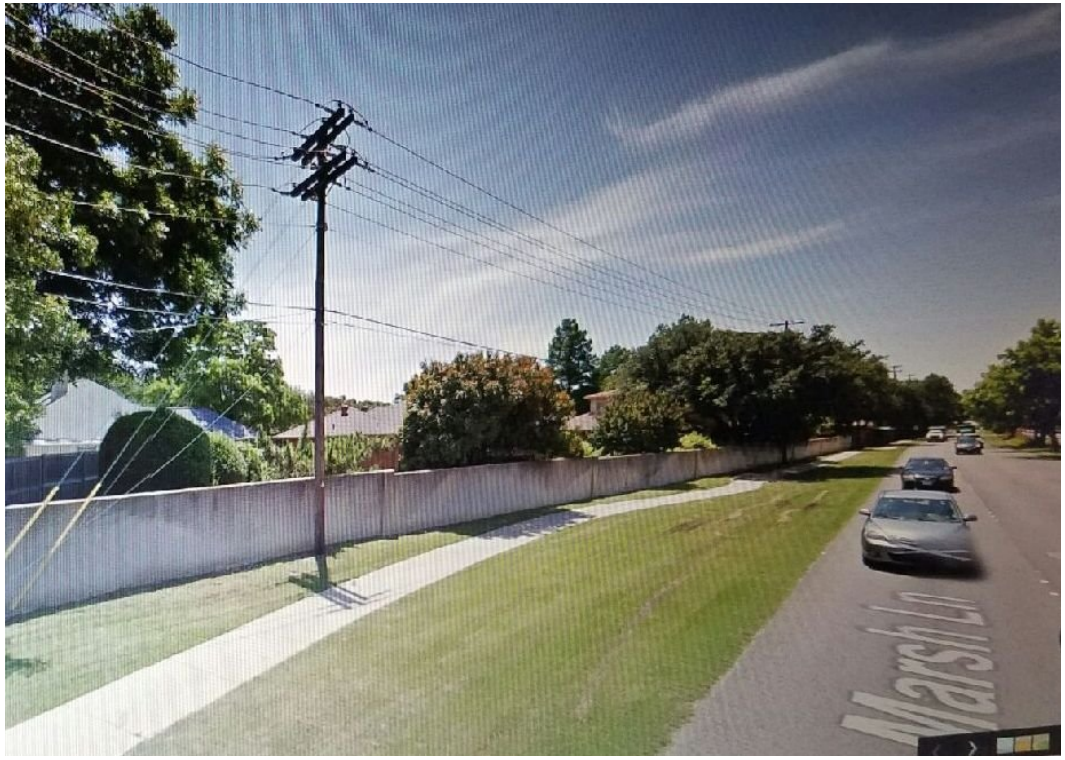
Extension

To insure appropriate follow through on an item City staff may need to contact you. Please make sure to *fill in either the **Phone** or **E-Mail Address** fields for this purpose.*

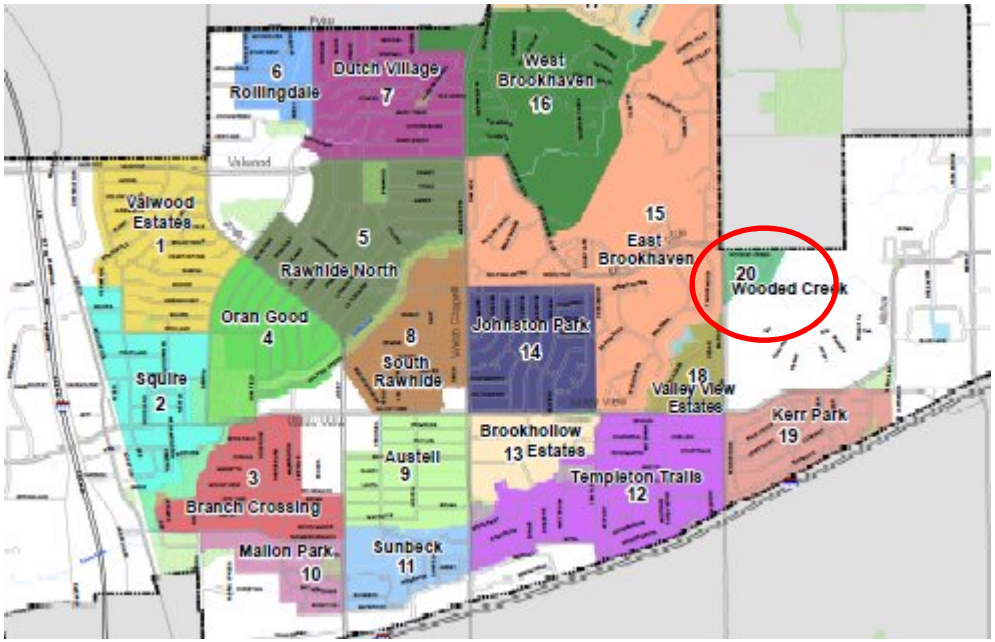
Describe briefly the requested topic:

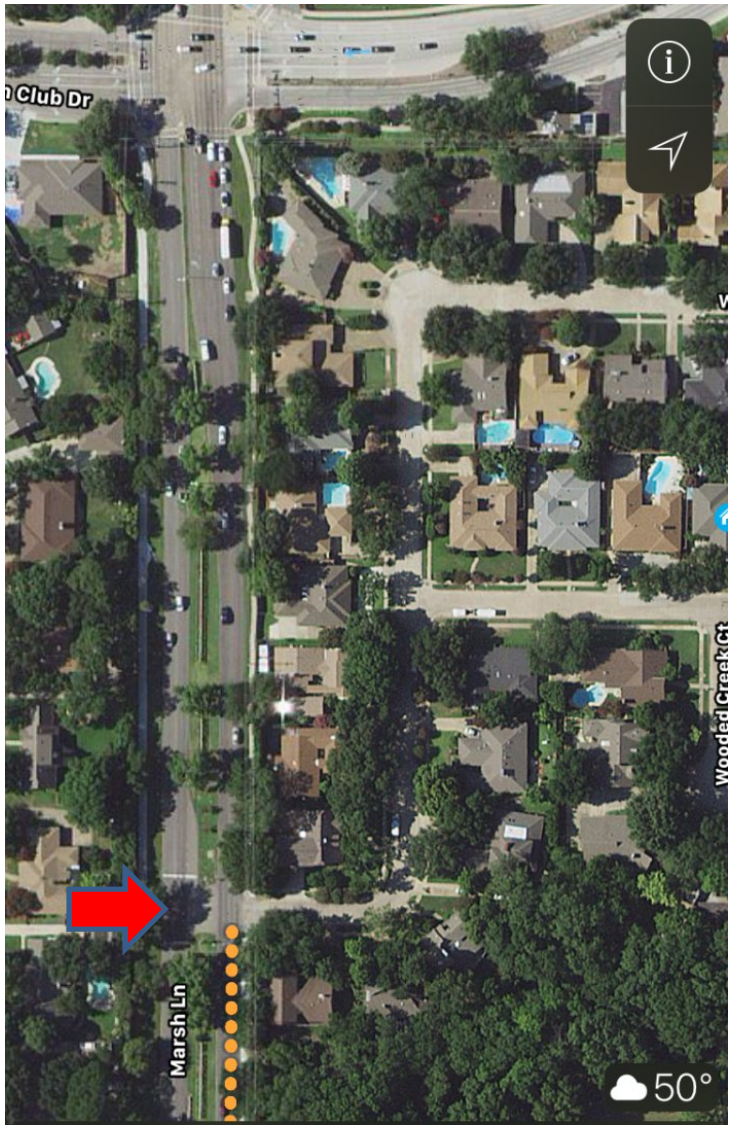
REQUEST CITY PARTICIPATION IN HELPING REPAIR WALL ALONG MARSH LAND AT WOODED CREEK

Wall Upgrade for Wooded Creek Estates



Location Overview





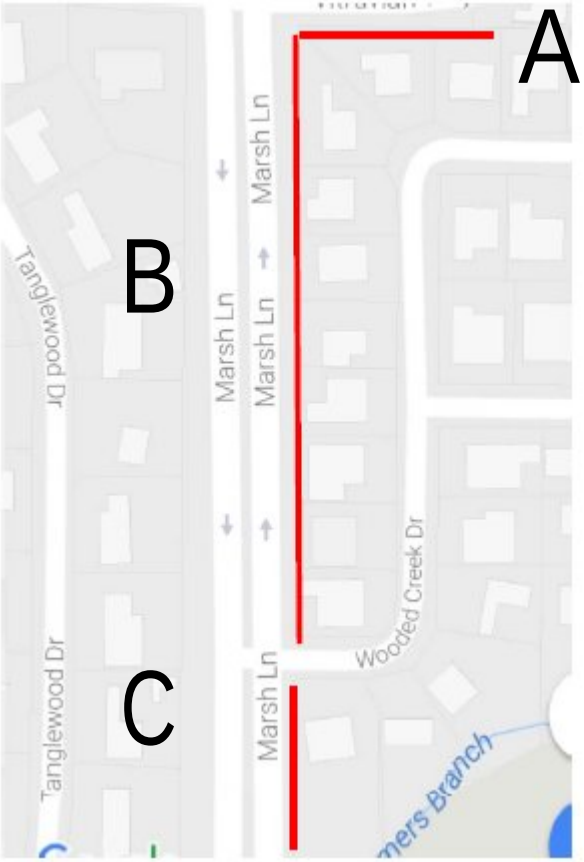
FACTS REGARDING REQUEST

- Wooded Creek Estates developed in early ‘70’s has 60 single family homes.
- Only one entry point to the development at a traffic control signal on Marsh Lane.
- Portion of original pre-cast wall has been replaced by independent wood design fences behind 4 homes backing on Marsh Lane.
- Remaining original 6’ wall is in poor repair, stained and leaning toward Marsh lane.
- This section of Marsh Lane has not had City supported landscaping since original development.

REQUEST FOR SUPPORT

1. Replace original 6’ precast wall with an 8’ high wall
2. Provide landscaping features between street and wall.
3.Create an inviting entry look with appropriate safety features.
4. Use precast wall at Valley View and Austell Parkway as design example.
5. Foundation designed to avoid maintenance problems over expected life.

REQUEST FOR SUPPORT



1. Wall can be designed in 3 sections. Total of 1059 LF long.
2. Section C should integrate into the new foot bridge across Farmers Branch Creek.
3. Entry between Section B and C should provide for safe traffic and pedestrian visibility to North and South.
4. Time construction to be after completion of new Southbound bridge.

Visibility Limited at Entrance Feature

Visibility Limited at Entrance Feature

City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16-311

Agenda Date: 12/13/2016 **Version:** 1 **Status:** Closed Session

In Control: City Council **File Type:** Report

Agenda Number: J.1

Council shall convene into a closed executive session pursuant to Section 551.072 of the Texas Government Code to deliberate regarding:

(a) Discuss the purchase, exchange, lease, or sale of real property located at 13605 Webb Chapel Road.

(b) Discuss the purchase, exchange, lease, or sale of real property located north of 635, east of I35, west of Webb Chapel Road, south of Valwood Parkway.